ANNUAL MEETING NUMBER

The Nation's Business

Agriculture . Mining . Manufacturing
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Finance . Education . Professions
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Second Annual Meeting

of the

Chamber of Commerce of the United States

THIS issue of The Nation's Business is largely devoted to speeches of national importance that received consideration during the three days' session of the Second Annual Meeting.

Twenty-one pages are devoted to "Antitrust Legislation."

Three pages are given to the speech of Hon. C. A. Prouty on "The Valuation of Railroads."

Five pages include all speeches on "The Maintenance of Resale Prices."

The whole issue renders available, at the earliest possible moment, the views of leading thinkers on additional corporate control.

Index of Contents for February 16th, 1914

THE NATION'S BUSINESS

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G. GROSVENOR DAWE, EDITOR

Entered as Second-class Matter, February 18, 1913, at the Post Office at Washington, D. C. Under the Act of March 3, 1879.

THE Second Annual Meeting of the Chamber of Commerce of the United States of America will mark another important step in the progress of this federation of the organized business forces of America.

An annual meeting is a period of stock-taking for an organization; when the thought is directed backward to review things already done and then forward to things projected.

The meeting, just concluded, ranks in importance with the original organization meeting in April, 1912, and the First Annual Meeting in January, 1913. It has proved that the impulse of April, 1912, has not become dissipated but has become strengthened The question in April, 1912, was as to whether the time had come for the business forces of the United States to cooperate in dealing with national business problems, mainly as affected by legislation. The full answer to that question has been given. The answer is found in two forms; first, through the statistics of the National Chamber's own growth; second, through its touch with the great questions of the day.

FROM the viewpoint of growth, the figures here included will indicate, beyond all question, the timeliness of this organization. On May 31, 1912, the National Chamber consisted of 44 organizations with 37,472 members in 15 states, including the District of Columbia: July 31, 1912, the National Chamber consisted of 105 organizations consisting of 76,828 members in 26 states, including the District of Columbia and the Insular possessions: January 31, 1913, the National Chamber consisted of 283 organizations with 159,951 members in 42 states, including the District of Columbia, the Insular possessions and the American Chamber of Commerce in Constantinople: June 30, 1913, the National Chamber consisted of 349 organizations with 212,013 members in 43 states including the District of Columbia, the Insular possessions, the American Chamber of Commerce in Constantinople and in Paris: December 31, 1913, the Chamber consisted of 488 organizations with 241,603 members in 47 states, etc.: January 31, 1914, the National Chamber consisted of 506 organizations with 244,870 members in 47 states, etc.

During the year, by authority of the amendment of By-Laws which took place in January, 1913,, the addition of individual members, entitled to receive the services of the Chamber, grew from zero to 1,716. These individual members are scattered in varying numbers through 38 states. The distribution by states becomes of interest because, as will be seen in the proceedings of the Second Annual Meeting, a distinct limit of 5,000 is placed upon individual membership. Special reference to this Resolution also appears in the Annual Address of President Wheeler. The present distribution of individual members is as follows:

Illinois, 242; New York, 239; Minnesota, 201; California, 157; Ohio, 133; Wisconsin, 113; Massachusetts, 102; Pennsylvania, 83; Washington, 61; Michigan, 54; Missouri, 52; Oregon, 52; Colorado, 41; North Dakota, 23; Texas, 22; Montana, 21; Tennessee, 21; Indiana, 16; Iowa, 13; Virginia, 10; Alabama, 7; Arkansas, 7; Connecticut, 7; Nebraska, 5; Rhode Island, 4; Maryland 4; District of Columbia, 3; North Carolina, 3; Paris, France, 3; Louisiana, 2; West Virginia, 2; New Jersey, 2; South Carolina, 2; Vermont, 2; Florida, 1; Georgia, 1; Wyoming, 1.

The above statements relative to membership totals will give to the members and to the officers, as well as to the general group of organizations yet to become affiliated with the Chamber, a positive assurance relative to the value of the work involved in creating a National Chamber.

FROM the second viewpoint, that of masterly activity in the direction of great public questions, the report of the Board of Directors and the program of the Second Annual Meeting have proved the ability of the National Chamber to stimulate in the most effective form, present-day business opinion on matters of great national moment.

In view of the recent message of President Wilson to Congress relative to Antitrust Legislation and the later introduction of bills purporting to express the convictions of the President, nothing in the way of a public meeting could have been more timely, more influential than the discussions which took place on the second day of the Second Annual Meeting, relative to antitrust legislation as a whole.

So important are these speeches in assisting up-to-the-minute judgment relative to the subject that it has been deemed best to include, in this issue of THE NATION'S BUSINESS, every speech delivered on the subject and to associate with these speeches the Sherman Law, and proposed additions, that were in the minds of the speakers during the discussion.

By this means, those who participated in the meetings, and the still greater number who could not attend, will be able to deliberate satisfactorily on the whole subject of antitrust legislation. Great advantage will accrue from such deliberation; for it will produce definite public opinion relative to the whole subject; and, in the case of our members, it will enable them to reach conclusions on the whole subject prior to the receipt of the Referendum on Antitrust Legislation which, as will be seen by reference to page 32, is imminent.

CLOSELY associated with seeming purposes to extend government supervision into broader fields than hitherto considered necessary, was the discussion relative to the maintenance of resale prices. Because of recent decisions rendered in the highest courts the whole subject has become acute within the past two years. It seems possible that it may lead to a discussion of the extension of Federal law into the retail fields of merchandising, thus bringing under consideration all activities, from the crude state of raw material through every phase of manufacture, wholesaling, jobbing, retailing, until the ultimate consumer is reached.

Consequently the speeches relative to the maintenance of resale prices which will be found on pages 33 to 37 will lay before the awakened business thought of America opinions relative to the manufacturer's and the retailer's rights. The subject is new and is entitled to immediate and earnest consideration, in view of the fact that the field of the retailer is the greatest field of all; as it embraces every purchased necessity of the many millions who make up the population of the United States.

It wil be noted with satisfaction that a resolution was passed by the Second Annual Meeting instructing the President of the National Chamber to appoint a separate committee to investigate the subject. The resolution follows:

WHEREAS: Fixing and maintaining of resale prices on articles sold under trade marks and other means of identification which embody the good will of the producer, is a matter of vital importance to the public and to the whole business community, which should be carefully investigated from the standpoint of producer, dealer and the public.

NOW BE IT RESOLVED: That a separate committee be appointed by the President of the Chamber of Commerce of the United States of America to investigate the subject in its economic, public and business aspect and report its conclusions and recommendations to the Board of Directors of the Chamber of Commerce of the United States of America.

IN the preparation of the program for the Second Annual Meeting, it was realized that an adequate survey of the complicated relations of business would not be complete without reference to the present problems of the great transportation interests. As the valuation of railroads is now in process of execution under a Federal law, passed early in 1913, the speech of Hon. C. A. Prouty warrants earnest consideration by business men generally. It gives the first official statements relative to the problems involved. The speech as printed in THE NATION'S BUSINESS, was in the form of a prepared manuscript and therefore may be regarded as a deliberate estimate relative to cost, benefits, methods of execution, etc. The immensity of the task will possibly come as a surprise to the general public. It involves more than the valuation of today; it involves the complete history of every railroad system and all the originally smaller elements brought together to form a system. It proposes to bring together every fact relative to railroad activities and promotion of the past, back to the very beginning, and also to set a valuation upon the railroads as of today.

A helpful feature of the Second Annual Meeting was the address of Hon. William B. Wilson, Secretary of Labor; for it set forth very carefully the earnest convictions of the Secretary relative to the changed industrial conditions of today arising from increased human power through machinery. His analysis of the adjustments that must necessarily come, because of the changes that now prevent personal acquaintanceship between the majority of the employers and the employees, was striking and effective.

The closing portion of Secretary Wilson's speech was a most earnest appeal for consideration, by business men, of the problems involved in aiding children to grow up into efficient men and women. The appeal of the Secretary was for vocational education and guidance; so that the majority of all children who come to maturity and find themselves compelled to work with their hands may, in their school years, be aided in securing preparation for life-work, in contrast to the preparation for collegiate and professional life, now very widely characteristic of the ordinary school curricula.

AFTER two years of vigorous and broad service, recognized in its importance all over the nation, President Harry A. Wheeler, at the Second Annual Meeting, gave back his authority to the organization that originally conferred it. Mr. John H. Fahey, of Boston, who was a leading force in all the conferences in Washington and elsewhere that preceded the meeting of April, 1912, and who has been Chairman of the Executive Committee for two years, has now been elected to the Presidency by the directors. A splendid summons to the loyal support of all new officers will be found in the latter portion of President Wheeler's address, under the sub-head on page 10, "New Officers to Bring New Vigor."

TWO new names appear among the Vice-Presidents: one of these is A. H. Mulliken, President of the Pettibone-Mulliken Company of Chicago, Illinois. During the past year Mr. Mulliken has served the National Chamber actively as a member of the Special Committee on the Department of Commerce. The other new name is that of Robert F. Maddox, Atlanta, Georgia, who is one of the prominent younger citizens of the South, and who has had a marked effect upon the progress of Atlanta both as Mayor and, at the same time, as one of its leading business and financial forces.

THE Second Annual Meeting stimulated all who attended it. The National Chamber now moves forward to its third year, each official expectant that on the foundation work already laid shall, through equally devoted labors, arise a superstructure of increasingly useful service. The organization at its inception, was designed to supply a lacking focus for public opinion. In two years it has come into merited appreciation. The beginning and the end of the National Chamber is service. To that the officials and the members are devoted.

SECOND ANNUAL MEETING *of the* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

WASHINGTON, D. C., FEBRUARY 11, 12 and 13, 1914

THE story of the most important business gathering of the year is told in the following pages. In dealing with the record of the meeting, the running story by sessions and acts is first told. Then comes the report of the Board of Directors, immediately followed by the speech of President Wheeler and a summary of Standing and Special Committee Reports. From page 12 onward exclusive attention is given to the remarkable speeches on Antitrust Legislation, the Maintenance of Resale Prices, and the Valuation of Railroads. As these deal with problems most vitally connected with National business health, their inclusion will serve to evolve more definite National convictions, and thus aid Congress in legislating wisely for the benefit of our whole Nation.

THE Second Annual Meeting of the Chamber of Commerce of the United States of America, involved, for the Officers and Directors, one entire week of activity in the city of Washington. The Executive Committee met at National Headquarters on Saturday, February 7, and had three sessions. The Board of Directors met on February 9 and were in session morning and afternoon. In the evening they entertained President Wheeler at dinner and presented him, as a token of their regard, with a service of silver plates. The Directors met again on the morning of the 10th. On the afternoon of the 10th the National Council was in session and considered and approved the program of the Annual Meeting. The Directors again met after the adjournment of the National Council. The Annual Meeting itself covered three sessions on February 11, two on February 12, followed by the Annual Banquet, and two on February 13. Subsequent to the adjournment of the Annual Meeting, the Directors met on the evening of February 13 and again on the morning of February 14.

IMPORTANCE OF MEETING REALIZED

The Second Annual Meeting was characterized by an intensity of purpose and a regular attendance upon sessions such as is rarely seen at a convention. During the first session on Wednesday the 11th when, of necessity, much matter of a routine character was attended to, the willingness of the delegates to remain in attendance was noteworthy, and indicative of the interest which was felt by all in the vitally important subjects to be brought before the Annual Meeting as a whole. From the first session to the last no delegate showed any willingness to miss a session or a discussion; for the understanding seemed to be general that this great gathering of business men was the most important business gathering of the year and provided the only opportunity for many men of many interests to come together as one to discuss national business problems as affected by projected legislation.

FIRST SESSION FEATURES

The two special features of the first session were the Report of the Board of Directors which will be found on page 6, and the address of President Wheeler, which will be found on page 9 of this issue. During this session, various committees were appointed as follows:

COMMITTEE ON RESOLUTIONS:

Division 1. E. A. Filene, Boston, Mass.
" 2. G. A. Hollister, Rochester, N. Y.
" 3. Horton Corwin, Jr., Norfolk, Va.
" 4. Leon Simon, New Orleans, La.
" 5. E. M. Clendening, Kansas City, Mo.
" 6. Joseph H. Defrees, Chicago, Ill. (Chairman)
" 7. Watson S. Moore, Duluth, Minn.
" 8. Thomas B. Stearns, Denver, Colo.
" 9. J. E. Chilberg, Seattle, Wash.

MEMBERS AT LARGE.

William H. Douglas, New York, N. Y.
William H. Stackhouse, Springfield, Ohio.

COMMITTEE ON CREDENTIALS:

Division 1. Emmett Hay Naylor, Springfield, Mass.
" 2. Logan McKee, Pittsburgh, Pa.
" 3. A. V. Snell, Charleston, S. C.
" 4. J. R. Babcock, Dallas, Texas.
" 5. Wm. Townsend, Memphis, Tenn.
" 6. Munson Havens, Cleveland, Ohio.
" 7. J. P. Hardy, Fargo, N. D.
" 8. J. F. Galbraith, Denver, Colo.
" 9. Robert N. Lynch, San Francisco, Cal.

AT LARGE.

Frank W. Noxon, New York City.
Philip A. Grau, Chicago, Ill.

COMMITTEE ON NOMINATIONS:

STATE	NAME	CITY
Alabama:	John D. Sibley,	Birmingham.
Arkansas:	H. M. Jacoway,	Little Rock.
California:	Mark L. Burns,	Sacramento.
Colorado:	Aaron Gove,	Denver.
Connecticut:	Isaac M. Ullman,	New Haven.
Delaware:	W. D. Mullen,	Wilmington.
District of Columbia:	John L. Weaver,	Washington.
Florida:	L. E. Dozier,	St. Augustine.
Georgia:	Wright Willingham,	Rome.
Illinois:	H. G. Herget,	Chicago.
Indiana:	Roscoe O. Hawkins,	Indianapolis.
Iowa:	B. F. Kanuffman,	Des Moines
Kansas:	John L. Powell,	Philadelphia.
Kentucky:	James F. Buckner, Jr.	Louisville.
Louisana:	C. H. Ellis,	New Orleans.
Maine:	F. E. Boothby,	Bangor.
Maryland:	Charles E. Falconer,	Chicago.
Massachusetts:	E. A. Filene,	Boston.
Michigan:	Norman N. Rupp,	Saginaw.
Minnesota:	Douglas A. Fiske,	Minneapolis.
Mississippi:	R. W. Millsaps,	Jackson.
Missouri:	John L. Messmere,	St. Louis.
Montana:	W. A. Selvidge,	Billings.
Nebraska:	William F. Baxter,	Omaha.
Nevada:	Dwight Jones,	Reno.
New Hampshire:	Gustave Peyser,	Portsmouth.
New Jersey:	M. F. Quinn,	Rahway.
New York:	W. E. Robertson,	Buffalo.
North Carolina:	Col. Jacob L. Ludlow,	Winston-Salem.
Ohio:	J. Edward Good,	Akron.
Oklahoma:	J. F. Darby,	
Oregon:	M. J. Duryea,	
Pennsylvania:	William H. Stevenson,	Pittsburgh.
Rhode Island:	E. J. W. Proffitt,	Providence.
South Carolina:	C. B. Huiet,	Charleston.
South Dakota:	Charles A. Howard,	Aberdeen.
Tennessee:	S. B. Anderson,	Chicago.
Texas:	George M. Courts,	Chicago.
Utah:	R. J. Evans,	
Vermont:	James Hartness,	Burlington.
Virginia:	Bernard W. Crump,	Newport News.
Washington:	J. E. Chilberg,	Seattle.
West Virginia:	William Seiber,	Huntington.
Wisconsin:	A. T. VanScoy,	Milwaukee.
Wyoming:	Joseph A. Breckens,	
INSULAR POSSESSIONS:	Sidney M. Ballou,	Honolulu.
France:	William H. Ingram,	Paris.

Second Annual Meeting (*Continued*)

MEMBERS AT LARGE, COMMITTEE ON NOMINATIONS:

George A. Post,	Railway Business Association, New York, N. Y.
Frank W. Whitcher,	National Leather and Shoe Finders' Association, St. Louis.
J. Clinton Smoot,	National Association of Tanners, Chicago, Ill.
Ludwig Nissen,	National Jewelers' Board of Trade, New York.
Murdock MacLeod,	Lumbermen's Association, Chicago, Ill.
R. Kirk Askew,	Wholesale Saddlery Association of the U. S., Chicago.
James F. Finneran,	National Association of Retail Druggists, New York.
F. C. Schwedtman,	National Association of Manufacturers, U. S. A.,
George P. Hummer,	National Association of Furniture Manufacturers of America, Grand Rapids.
S. E. Swayne,	National Implement and Vehicle Association, Chicago.

SECOND SESSION FEATURES

The Second Session was held on the afternoon of Wednesday the 11th and was devoted to the reports of the following committees, active during the preceding twelve months: Patents, Trade Marks and Copyrights; Banking and Currency; and Statistics and Standards. Further reference to these reports appear under the general heading of Reports, on page 11. A very impressive feature of the Second Session was provided in the four speeches dealing with the methods of commercial organizations. Further reference to these speeches will be found on page 40. They will be extensively quoted in the March issue of THE NATION'S BUSINESS.

THIRD SESSION FEATURES

The Third Session, held in the evening of February 11, brought together not only the majority of the delegates, but a great many visitors to the city who were interested in the two important subjects discussed during that session.

The first speech of the evening was delivered extemporaneously by Hon. William B. Wilson, Secretary of Labor, who took as his topic, "The Relation of the Department of Labor to Industries and Commerce." Secretary Wilson's speech strongly developed an argument relative to the mutuality of interests existing between labor and capital. At a certain point in the speech of the Secretary where he had shown the effect of machinery upon the greater amount of production and upon the higher standard of general comfort, he pointed out that disputes between labor and capital have in our day become more acute because of the almost complete disappearance of personal relationship between employer and employee. At this point, the remarks of the Secretary are quoted in full: "When a dispute of that nature arises that results, or is likely to result, in a suspension of operation in any given industry, the temper, the spirit, of both sides has been aroused. They are not so likely to listen to reason presented by each other as they would be if they were considering the proposition in calmer moments. One of the purposes for which the Department of Labor has been created is to step in when that condition of affairs exists and offer its good offices in an effort to bring the contending parties together, in order to adjust their difficulties, because if it has come to the point where a stoppage of work takes place, then it means an economic loss, a loss not only to the employers and employees engaged in the contest, but a loss to the entire community of forces that ought to be valuable in producing valuable economic results.

When the Department of Labor steps in when a condition of that kind exists, the first step that should be taken is to endeavor to get those who are immediately interested in the contest to work out their problem themselves. A great deal depends on getting them to work out their problem themselves. A great deal depends on getting them to realize the mutual interests they have, and if they can sit down around the council table and work out their problems on as nearly a correct and mathematical basis as it can be arrived at, and the trouble is adjusted in that way, the spirit of co-operation which grows out of a condition of that kind is bound to be beneficial in the carrying on of the work in the particular plant.

Failing to secure a mutual consent to consider their own problems and to deal with them and settle them, if they can, then it becomes the duty of the new department to act as a mediator, as a go-between, and to pass between the employer and the employees, not for the purpose of imposing upon either the employer or the employee the particular views of the Department, or the Department head, but for the purpose of trying to find some mutual basis, some basis upon which two parties can agree and thereby eliminate the possible contest.

Failing in that, then, to suggest to both parties the advisability for their own interests and for the interests of the community of submitting the questions at issue to arbitration,—*to some disinterested party.* It is very much better to settle it themselves, but failing to settle it themselves, then, in the interest of industrial peace, in the interest of the community at large, it is necessary to submit the questions at issue to disinterested parties and allow them to determine such questions.

In proposing that as a means of adjusting industrial disputes, I do not want to be misunderstood. I do not want to be understood as proposing compulsory arbitration, because I do not believe in compulsory arbitration, as applied to industrial disputes."

The second impressive utterance of the evening came from Hon. Charles A. Prouty, Chief of Valuation in the Interstate Commerce Commission, entitled "Physical Valuation of Railroads." As this is the first official utterance relative to the task confronting the Interstate Commerce Commission relative to ascertaining the value of railroads in the United States, the speech is included in full. It will be found on page 38.

A most interesting feature of this session was a speech from the floor, delivered by Bernard J. Shoninger, President of the American Chamber of Commerce in Paris. His remarks dealt in a general way with the intricate trade relations existing between this and European countries. In the closing portion of his address, he urged national interest in the Sixth International Congress of Chambers of Commerce to be held in Paris next June.

During this session, the By-Law relative to individual membership was unanimously amended so as to place a limit upon the number of individual members. The amended by-law (Article XII) is here included:

SECTION 1. Persons, firms or corporations who are members in good standing of any organization admitted to the Chamber shall be eligible for election to this body by the Board of Directors and shall be known as Individual Members. *Applicants for such membership shall set forth the business* or professional interests of the applicant, the name of the organization with which he is affiliated and such additional information as the Board of Directors may require.

SECTION 2. Individual Members shall pay annual dues of $25, which shall include subscription to the regular publications of the Chamber and such members may also avail themselves of the facilities of the National Headquarters, shall be eligible to membership on all standing or special committees, may attend all regular and special meetings of the Chamber and, subject to the rules of such meetings, shall have the privilege of the floor, but they shall not be entitled to vote except as duly accredited delegates of Organization Members. All questions submitted by mail to Organization Members shall also be sent to each Individual Member with the request that he file an opinion thereon with the affiliated organization of which he is a member.

SECTION 3. The total number of Individual Members shall be limited to five thousand and these shall be apportioned by the Board of Directors as equitably as possible among the Organization Members. As soon as practicable after the adoption of this section, the Board of Directors shall notify each Organization Member of the number of individual memberships to which it is entitled, and every Organization Member shall be given the opportunity of reserving its proportion as indicated by the Board of Directors until July 1, 1914. Individual memberships not actually taken under the allotment made by the Board of Directors by July 1, 1914, may then be distributed by the Board of Directors among those Organization Members applying for a larger number than that contained in the original allotment.

FOURTH SESSION FEATURES

The morning and afternoon session of February 12 were devoted to a discussion of antitrust legislation. Delegates, without an exception, declared subsequent to attendance upon these two sessions, that no other time had they participated in a more valuable meeting, nor had the great industrial questions of the day been placed before them more clearly.

The two sessions will have marked effect upon the national mind relative to the problems involved in antitrust legislation, from the beginning of the morning session until the end of the afternoon session, the speakers, each in his own way developed some phase of the subject, so that the speeches taken all together practically cover the tremendous problems involved in, first, concentration of industry in the United States; second, interlocking directorates and holding companies; third, the rights of private parties to make use of government action under the Sherman law; fourth, the proposed Interstate Trade Commission, and fifth, the question of the industrial efficiency of the trust form of business organization.

The whole subject was opened for discussion by Hon. Wm. C. Redfield, Secretary of Commerce, whose speech will be found on page fourteen. It will be noted that Secretary Redfield regards the trust form of organization as having great possibilities of industrial inefficiency involved in it.

Mr. Redfield was followed by President Charles R. VanHise of the University of Wisconsin. His speech will be found on page fifteen. It took up three subjects on which there is general agreement; namely, that monopoly should be prohibited; that unfair practice should be eliminated, and that competition should be retained. The speech as a whole represents a demand for clearer definition of terms so as to avoid action based upon misapprehension.

Mr. Victor Morawetz of New York, whose knowledge of corporation law is nationally recognized, made the next speech. It will be found printed in full beginning with page 20. The speech as a whole traces the history of the changes in interpretation of the Sherman Law between 1895 and recent months.

Second Annual Meeting (*Continued*)

Mr. Frederick P. Fish, former President of the American Telephone and Telegraph Company, followed Mr. Morawetz. The thought running through Mr. Fish's speech was that research should precede legislation. His address will be found on page 22 and following pages.

Mr. Henry R. Towne, President Yale and Towne Manufacturing Company, and former President of the Merchants' Association of New York City, followed Mr. Fish. His speech which will be found on page 27, and that of Mr. Guy E. Tripp, Chairman of the Board of Directors, Westinghouse Electric and Manufacturing Company, which will be found on page 28, dealt, in differing forms, with an analysis of the present proposed antitrust legislation.

The speaker who followed Mr. Towne was Professor Henry R. Seager of Columbia University of New York City. The speech as a whole held very closely to a discussion of the proposed Interstate Trade Commission, its scope, its possibilities, both favorable and dangerous. Professor Seager's speech will be found on page 29.

The closing speech of this symposium on antitrust legislation was delivered extemporaneously by Mr. Louis D. Brandeis of Boston, who came direct to the session from a session in connection with the rate hearings before the Interstate Commerce Commission. His remarks are on page 31.

THE ANNUAL BANQUET

Three hundred and seventy delegates, guests and ladies, sat down to the Annual Banquet on Thursday evening, February 12. Two speeches were delivered, one by Secretary Redfield of the Department of Commerce, and the other by Professor Doctor Karl Rathgen of Hamburg, Germany.

In introducing Secretary Redfield, President Wheeler linked the career of Abraham Lincoln with the activities and researches of the day by saying in part: "This day, which I call you to remember is Lincoln's birthday, has been spent by us in a manner that would fittingly celebrate such a birthday. As business men we have attended to our business, believing that even the great Emancipator, considering the fact that our time was short and the need that there should be much discussion upon this important subject which we have been discussing, would himself have approved our use of the day in preference to a more personal celebration. * * In honoring the memory of Abraham Lincoln, greatest of all Americans with the possible exception only of Washington, we are honoring ourselves and our Nation which could bring forth out of the semi-obscurity at a time of great need, one of the tallest figures in the history of the human race."

The speech of Secretary Redfield was largely confined to a review of the activities and broadening scope of the Department of Commerce. The conclusion of his speech was a broad appeal for sympathy between the employer and the employee.

The remarks of Professor Doctor Karl Rathgen were deeply appreciated. As a student of German industrial conditions and of the development of industries in the United States, the address drew marked attention to the caution with which Germany is proceeding in the matter of the control of corporations and, by implication, the necessity for caution in this country.

SIXTH SESSION FEATURES

The Sixth Session was, by courtesy of the Pan American Union, held in the Hall of the Americas, in the Pan American Building. The session opened on the morning of the 13th and was devoted solely to the discussion of the maintenance of resale prices.

The opening statement by Hon. Joseph E. Davies, Commissioner of Corporations, will be found on page 33.

Mr. Davies was followed by Wm. H. Ingersoll of Robert H. Ingersoll and Brother, New York City, whose general topic was "Protection from Price Juggling." His speech will also be found on page 33.

The concluding statement dealt with price maintenance from the retailer's point of view and was made by Mr. Donald Dey of Dey Brothers and Company, Syracuse, N. Y. This speech will be found on page 36.

SEVENTH SESSION FEATURES

Three committees reported during this session: Fire Waste, Mr. Powell Evans, Chairman; Department of Commerce, Mr. John H. Fahey, Chairman; Vocational Education, Mr. H. E. Miles, General Chairman. Further reference to these Committee Reports will be found under Committee Reports on page 11.

During this session the election of thirteen Directors as provided in the By-Laws, took place as follows:

Frederic E. Boothby, Maine State Board of Trade, Portland, Me.
John H. Fahey, Chamber of Commerce, Boston, Mass.
James G. Cutler, Chamber of Commerce, Rochester, N. Y.
W. H. Stevenson, Chamber of Commerce, Pittsburgh, Pa.
Franklin Conklin, Board of Trade, Newark, N. J.
Willoughby M. McCormick, Merchants and Manufacturers' Association, Baltimore, Md.
Homer L. Ferguson, Chamber of Commerce, Newport News, Va.
John M. Parker, Association of Commerce, New Orleans, La.
Charles Nagel, Business Men's League, St. Louis, Mo.
T. J. L. Temple, Board of Trade, Texarkana, Ark.
L. J. Petit, Chamber of Commerce, Milwaukee, Wis.
Frederick Bode, Association of Commerce, Chicago, Ill.
Hovey C. Clarke, Civic and Commerce Association, Minneapolis, Minn.

During this session also the resolutions of the Second Annual Meeting were voted upon. The same conservatism which was shown at the First Annual Meeting in the matter of resolutions was displayed at the Second Annual Meeting. There was unwillingness to place the National Chamber on record relative to any subjects concerning which there had not been the gathering of opinion from the constituent members. The resolutions dealt with the following subjects:

Referendum Number 1, in favor of a National Budget.
Referendum Number 3, relative to exemptions under the Sherman Law.
The Joint Conference of Operators and Miners of the Bituminous Coal District. This resolution expressed the hope that the Conference would favor continuous operation of mines pending the solution of questions now in conference.
The establishment of a Department of Social Welfare in the Chamber of Commerce of the United States.
Calling on the Government to protect American interests from discriminations in the customs tariffs of several nations.
The appointment of a committee to investigate the subject of price maintenance in respect to articles sold under trade marks.
Thanks to the Department of Commerce; to the speakers at the Second Annual Meeting, and to the Pan-American Union.
The resolution relative to antitrust legislation will be found on page 32.

MEETING OF THE BOARD OF DIRECTORS

The meeting of the Board of Directors took place immediately after the adjournment of the Seventh Session. The Directors were in session Friday evening, the 13th and Saturday the 14th. The President and Vice-Presidents were elected, and vacancies in the Board filled. The official list of Officers and Directors will be found at the head of page 2 of this issue.

SPECIAL FEATURES

The valuable display of the work carried on by the Department of Commerce in the Bureau of Foreign and Domestic Commerce and in the Bureau of Standards was a feature of the entire Annual Meeting. The display was in the small ball room of the Willard Hotel and showed by large diagrams the great clearing house services performed by the Bureau of Foreign and Domestic Commerce and the intimate relationship between the Bureau of Standards and all features of business research the Nation over. The various diagrams have been photographed and will be made a feature of the Year Book of the Chamber.

ANNUAL REPORT
of the
BOARD OF DIRECTORS
of the
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

Since the last Annual Meeting of the Chamber the Board of Directors has held seven meetings as follows:

January 23 and 24, 1913, Washington.
February 12 and 13, 1913, Washington.
April 24 and 25, 1913, Washington.
July 14, 15, 16, 24, 26, 1913, San Francisco and Western trip.
October 13, 14 and 15, 1913, Detroit.
December 8, 9 and 10, 1913, Rochester.
February 9 and 10, 1914, Washington.

The total membership of the Board, including the six ex-officio members, is thirty-one. One or more vacancies have existed throughout the year. In spite of the fact that the membership is composed of men in active business in every section of the country and that meetings have been held at such widely separated points as Washington and San Francisco, there has never been any difficulty in securing the attendance of more than a quorum and the average attendance has been over sixteen.

DEATH OF DIRECTOR MICHAEL

The Board records, with deep feeling of personal sorrow and loss to the Chamber, the death on September 15 of Elias Michael of St. Louis, a Director of the Chamber since its inception. Mr. Michael gave generously of his time and interest to the service of the Chamber and the sound judgment and constructive initiative which he brought to its counsels have been and will be sorely missed. At the meeting of the Board held in Detroit, October 13 to 15, resolutions expressing the appreciation of his fellow Directors of his personality and services were adopted, spread upon the records and forwarded to his family. The vacancy created by the death of Mr. Michael has not been filled.

Report of Board of Directors (*Continued*)

RESIGNATIONS

Six resignations from the Board have been received during the year as follows:

Claude K. Boettcher,	Denver.	J. W. Motte,	Savannah.
C. G. Craddock,	Lynchburg.	George H. Kelly,	Omaha.
Edward G. Miner,	Rochester.	Homer H. Johnson,	Cleveland.

Mr. Charles Boettcher of Denver was elected at the April meeting of the Board to succeed Mr. Claude K. Boettcher and Honorable James G. Cutler of Rochester, N. Y., at the same meeting to succeed Mr. Miner. The other vacancies have not been filled. Mr. Homer H. Johnson of Cleveland, Ohio, was elected at the last Annual Meeting for a term of two years and his resignation was received and accepted at the December meeting of the Board, to take effect when his successor was elected. Mr. Johnson having found it impossible to continue for a second year.

POLICY IN HOLDING MEETINGS

The policy of the Board in holding meetings in different parts of the country so as to come into closer touch with the constituent members of the Chamber, to make them feel that the National Chamber is created for their service and understand the methods by which that service is carried out, is well indicated by the table of meetings of the Board at the beginning of this report. This policy the present Board deems it of the highest importance to continue. Not only has it proved of great constructive value in securing suggestions for new activities and broader service for the Chamber but also it has tended to clear away misconceptions and increase the interest and enthusiasm for this national federation of commercial bodies and its possibilities for usefulness in upbuilding the commercial interests of the country at large and encouraging that spirit of commercial patriotism which should become a source of pride to the American people. For the courtesies and unbounded hospitality and friendship extended to the Board by commercial organizations in all places which the Board has visited, it now wishes to place on record its sincere gratitude.

WESTERN TRIP

It was in furtherance of this policy that the Western trip of the Board of Directors, which culminated in the meeting held in San Francisco, July 14, was undertaken. It meant a considerable sacrifice, both personal and financial, on the part of those who made the trip and who undertook to pay half their expenses in addition to giving up over three weeks of their time, which otherwise would have been devoted to private business or summer vacation; but the results far exceeded even the expectations of what might be accomplished and more than repaid every sacrifice involved. Moreover, while the trip would have been justified even if the total cost of it had been a charge against the Chamber, in view of the new understandings and enthusiastic cooperation which it led to, as an actual fact it proved a financial asset, the new memberships, both organization and individual, which resulted from it having served to more than defray the cost to the Chamber.

The trip was carefully planned in advance to cover as many cities as possible in the three weeks allotted to it. The itinerary was strictly adhered to and all appointments kept with the exception of the regretted failure to reach Salt Lake City in time for the lavishly planned entertainment and meeting with commercial bodies there—a failure due to a serious wreck of the train to which our cars were attached on the previous night. The party left Chicago in two special cars July 5th and returned to Chicago July 27th. The Officers and Directors who took part in the trip throughout were President Wheeler, Vice-Presidents Farquhar and Miles, and Messrs. Cutler, Fahey, Johnson, McCormick, Philp, Rhett, and Temple. Mr. A. L. Shapleigh, President of the Business Men's League of St. Louis, accompanied the party as the substitute for Director Michael and took part in the meetings and speechmaking. Also, the General Secretary and Mr. Satterlee, a stenographer, who handled all the press arrangements, were members of the party. At various points along the route the party was joined by Directors Kelly, Boettcher, Carroll, Averill, Wells and Vice-President Teal. Thirteen members of the Board took part in the meeting at San Francisco.

Regular stops lasting from a few hours to two days, for which arrangements for meetings with local organizations had been completed in advance, were made at the following places:

Omaha, Neb.	San Francisco, Cal.	Missoula, Mont.
Cheyenne, Wyo.	Portland, Ore.	Helena, Mont.
Denver, Colo.	Tacoma, Wash.	Billings, Mont.
Pueblo, Colo.	Seattle, Wash.	Fargo, N. D.
Salt Lake City, Utah.	Spokane, Wash.	Minneapolis, Minn.
Los Angeles, Cal.		St. Paul, Minn.

At each point meetings which gave great satisfaction to the members of the Board were held. The Directors were able to get in touch with many more commercial organizations than those in the cities at which actual stops were made through the facts that the organizations in these cities sent invitations to representatives of commercial organizations in the surrounding country to attend the meetings and that at points along the route where the party was unable to alight officers of local organizations boarded the special cars and held conferences with the Directors. An extended story of the trip was printed in the July and August issues of THE NATION'S BUSINESS.

The affiliation of a considerable number of new organizations was secured by the Directors during the trip and arrangements made with the commercial organizations visited to secure others. Immediately following the trip Field Secretaries Trefz, Lind and Dorland were sent out from Chicago to complete the work of securing full representation in the States which the trip covered. As the result of the trip and this subsequent activity the Chamber has secured to date the addition of 54 organization members and 507 individual members

EXECUTIVE COMMITTEE

Owing to the fact that the Board of Directors has met on the average more frequently than once in two months and has remained in session until the accumulated business was disposed of, there has been no occasion for meetings of the Executive Committee except in connection with the Annual Meeting to which this report is submitted. The Committee met on February 7 to prepare business for the Board meeting on February 9.

ORGANIZATION MEMBERSHIP

The organization membership or, in less technical phrase, the commercial organizations throughout the country which are affiliated with and comprise the Chamber of Commerce of the United States, which was reported at the last Annual Meeting as 280 organizations representing 42 States, the District of Columbia, Hawaii, the Philippines and Porto Rico and one foreign country, has practically been doubled. Following out the purpose of making this Chamber thoroughly democratic in organization and control, the Board of Directors through its own members and its field secretaries has bent its efforts to increasing the membership, even though the financial return was not sufficient to pay the cost of canvassing, omitting entirely from consideration the annual cost of service which amounts to more than half the minimum dues. The result is that we are able to report at this time an organization membership of 516, representing 47 States, the District of Columbia, Hawaii, The Philippines, Porto Rico and including also the American Chambers of Commerce in Paris, France, and the Levant. Only the State of New Mexico and the District of Alaska remain unrepresented.

INDIVIDUAL MEMBERSHIP

Individual membership was created by amendment to the By-laws adopted at the last Annual Meeting. Individual members must be members in good standing of an organization affiliated with the National Chamber and have no vote except through the organization to which they belong. In return for annual dues of $25 they receive direct all the services of the Chamber, have the use of the facilities of the headquarters in Washington, may attend meetings and have the privilege of the floor. The information service rendered to individual members by the Washington office has a market value far in excess of the dues to any business, firm, corporation or individual in any wise affected by national legislation or regulation and there is every reason to expect that in a brief time, as the importance of this service becomes generally known among American business men, the limit of five thousand placed on the individual membership of this Chamber will be reached, which would provide the Chamber with sufficient funds with which to conduct its operations, increase and improve its services without increasing the burden on the affiliated organizations, which, as a general rule, feel a need for using all available funds for local purposes. Indeed, we expect competition for these memberships and little disposition to relinquish one when once obtained.

In March the Board gave recognition to the generosity and foresight of those who had subscribed to the organization fund in amount of $25 or over by electing them to individual membership. The campaign for individual members has been conducted with such success by the field secretaries acting under the direction of President Wheeler and with the help of members of the Board that to date the individual membership numbers 1,716.

INCREASE IN FORCE

The marked increase in the activities of the Chamber over the first year has necessitated an increase of force, both in the National Headquarters and in the field. There has also been need for more office room and a larger equipment. Mr. John M. Redpath, employed in November, 1912, to take charge of the Bulletin Service has been made chief of the Information Division and Mr. Basil Miles has recently been appointed chief of the Individual Membership Division. A special room has been acquired for the library in charge of a librarian Messrs. H. C. Coles, W. E. Dorland, John Lind, H. S. Atwood have been added to the field force while Mr. Warren Manley has been placed in charge of the new district office in San Francisco. There has also been a necessary increase in the clerical force.

DISTRICT OFFICES

The Board has abandoned its purpose of establishing a considerable number of district offices throughout the country in favor of the more effective and economical plan for keeping in touch with organization and individual members and learning of their needs of service through field secretaries, operating from a central office, and constantly returning, thus keeping in touch with the latest developments. It has been found absolutely essential, however, to maintain the Chicago office and to establish other offices in New York and San Francisco. The Dallas office, established last spring, was discontinued on June 30.

FINANCES

In the spring of 1912 the Board of Directors; realizing that the Chamber would die aborning should it attempt to operate during the period of organization solely on the income received from annual dues, undertook the raising of an organization fund of $100,000 to support the Chamber until the time when its regular sources of revenue would be adequate to carry on properly the work which naturally would fall to a great national, commercial organization. At the close of 1913,

Report of Board of Directors (*Continued*)

$53,363.25 had been raised on this organization fund. The results of operations to date have proved the justness of the estimate of the amount necessary for an organization fund. Had the balance of this $100,000 been raised—as it will be raised during the year 1914—not only would the Chamber have closed the year entirely free from debt but also there would have been a sufficient balance to take care of the difference between the revenue from dues and the cost of operation at the end of the year 1914, after which date the revenue from regular sources is expected to be sufficient to support the work. The deficit on December 31 amounted to $10,542.86.

SERVICES TO MEMBERS

Immediately upon the organization of the National Headquarters in Washington in August, 1912, the Chamber started in to render service to its members by placing all the facilities of the office and its staff at their disposal. The use of these facilities has steadily increased involving the necessity for the establishment of an Information Division properly equipped with expert help to handle promptly all requests for information. Such requests come from members in large numbers by mail, telegraph or long distance telephone and cover a very wide scope from mere questions as to the exact status of a particular legislative measure or matter pending before an executive department to queries involving considerable research and the gathering and compiling of statistics. The friendly and encouraging attitude which all the departments and bureaus, chairmen and clerks of Congressional Committees have adopted toward the Chamber, their willingness to make use of the Chamber and its services as a means for conveying exact information regarding public matters affecting commerce to the business men of the country has greatly facilitated this work. No more important service can be rendered to members than this prompt and accurate reply to requests for commercial information and as it becomes better known it is bound to grow in scope, as indeed it has been rapidly growing from its inception. The Division has been conducted with great efficiency and, except in cases involving extended inquiry or research, answers have been sent almost invariably on the same day the request for information has been received. It has been found necessary to charge the member for such service only in a few instances where the employment of additional assistance or some extraordinary expense has been involved.

BULLETIN SERVICE

The General and Legislative Bulletins, the former to cover matters of interest to business men arising in the executive departments, the latter to give accurate information regarding bills introduced into Congress affecting business, were started a few weeks prior to the last Annual Meeting. The General Bulletin is issued weekly throughout the year, the Legislative Bulletin weekly throughout the sessions of Congress. Both have been continued and improved. The effort is constantly made to render them more practical and concise. An incorrect impression exists among many members that these bulletins are intended to be read through week by week. On the contrary, no one wishes to read of all the bills introduced into Congress or of all the publications of the departments; the bulletins are for ready reference and are arranged under headings and indexed so that the busy man may glance them over in a few minutes, pick out readily the subjects in which he is interested and learn what there is pending in Washington affecting these subjects. There is overwhelming evidence of the value of these services and the appreciation in which they are held by members of the Chamber in the very numerous requests constantly received for further information regarding matters brought to the attention of the members through the bulletins and for copies of bills, reports, documents, and publications.

THE NATION'S BUSINESS

The need for a medium of publicity was felt from the start. It was met through the institution of The Nation's Business, first issued at irregular intervals in newspaper form and now appearing regularly on the 15th of each month in a large magazine form which permits of the use of display headings so that the business man can most readily pick out the articles contained in the paper of interest to him. Careful attention has been given by a Special Committee on Publicity to both form and matter and no effort has been spared in securing the best results. The publication has been vastly improved in both respects and the quotations of articles from it in the daily press, trade papers and the publications of commercial bodies prove that it has made a permanent place for itself. Publicity, however, is not confined to this magazine; the Editorial Division is constantly sending out important material to the press direct.

COMMUNITY PROMOTION

One of the main purposes of this Chamber, as stated in its By-laws, is that "of promoting cooperation between chambers of commerce, boards of trade and other commercial and manufacturers' organizations of the United States, increasing their efficiency and extending their usefulness." This purpose has been kept to the fore at all times by officers and employees of the Chamber who have taken part, by speaking before local bodies or otherwise, in the field work. A considerable part of the correspondence of the Chamber deals with questions of the organization, equipment and activities of local associations and The Nation's Business each month calls attention to the new departures of moment made by particular organizations, while containing from time to time summaries of important accomplishments in special lines of commercial organization activities. The field here is so large and important and the questions submitted to the Chamber so technical and varied that the new Board should seriously consider the establishment of a separate division to deal with the needs of organization members and make expert inquiries into the methods of community organizations.

SERVICE TO INDIVIDUAL MEMBERS

The institution of individual membership has made possible a broad development of the usefulness of the Chamber. It is primarily the business man himself, not the commercial organization, who needs the specific information regarding trade opportunities, foreign credits and the like, which the general office is constantly sending out and needs it, if at all, at the earliest possible moment. Transmission of such information to him through the organization of which he is a member inevitably involves delay and less direct, less efficient service. Certain information secured by the Chamber is confidential in character and not of a nature to be sent broadcast throughout the country in printed bulletin form while it may be of intense interest to the particular business man. Individual members receive all the services of the Chamber direct, at the same time they are received by the organizations of which they are members. To meet and anticipate the needs of individual members a separate division has recently been established maintaining a list of individual members carefully classified in accordance with the lines of business activity in which they are engaged and constantly in communication with them as to matters which affect their particular interests or as to confidential information regarding a condition in a particular line of business, either in this country or abroad, received by the Washington office.

This new service should be welcomed by the commercial organizations affiliated with the Chamber in that it is making membership in their organization of greater value than before. The service has already proved itself and marked appreciation of it is shown by individual members. No one can become an individual member who is not a member in good standing of a commercial organization affiliated with the Chamber; consequently, a new and important privilege attaches to membership in a local or trade organization.

SUBMISSION OF QUESTIONS

Since the Chamber was organized six questions of national importance have been submitted to referendum vote of all the organizations comprising the Chamber in accordance with the procedure prescribed by the By-laws and five of these questions fall within the period since the last Annual Meeting. Referendum Number One upon the subject of a national budget was completed January 14, 1913, and resulted in committing the Chamber to do all in its power to advance this important reform in governmental financial procedure.

Referendum Number Two:—Permanent Tariff Commission

Referendum Number Two on the question of a permanent tariff commission was prepared in accordance with a resolution adopted at the last Annual Meeting and sent out on April 30, 1913. The plan for a tariff commission was submitted by the Board of Directors in the following form:

ORGANIZATION OF COMMISSION

1. That the appointment of the commission, following the usual procedure, be vested in the President with the advice and consent of the Senate.

2. That in order to make the commission an effective administrative body the number of commissioners should be limited, preferably not more than five.

3. That the term of office of members of the commission should be sufficiently long to give the board stability and permanency, preferably six years, and the terms of members should expire in rotation as in the Interstate Commerce Commission.

4. That a provision should be made for minority representation as in the case of the Interstate Commerce Commission, where not more than three of the five members shall be of one party.

POWERS OF COMMISSION

1. To gather, investigate, and tabulate technical and statistical facts of all kinds pertinent to the tariff schedules, both in this and other countries.

2. The reports of the commission should be confined to ascertained facts and should exclude recommendations unless called for by the body having power to institute tariff legislation. The information secured by the commission should be available to either House of Congress and to the President.

The vote closed on June 14, 1913, and the canvass showed 715 votes in favor to 9 against. No favorable opportunity presented itself for bringing this matter to the attention of Congress during the special session but steps have been taken for its proper presentment at the current general session.

Referendum Number Three:—Rider on Sundry Civil Bill

At the April meeting the Board found itself faced by the fact that the Sundry Civil Bill had already passed the House of Representatives with an undesirable rider attached to it providing that no part of an appropriation to the Department of Justice for the enforcement of antitrust laws should be used for the prosecution of labor and agricultural combinations. Realizing both the lack of time in which to act and the unanimous sense of the business men of the country in opposition to this unwarrantable class legislation, resolutions expressive of the attitude of the members of the Board itself were adopted and transmitted to Congress and the President and a referendum pamphlet hastily prepared which was sent out to the membership on April 30. The vote closed on June 14 in time to transmit the result to the President before the signing of the bill. This result fully justified the attitude of the

Report of Board of Directors (*Continued*)

Board, 669 votes being cast in support of that attitude to 9 against. Although the President gave his approval to the bill, he issued a statement that he had done so in view of the fact that no limitation was placed upon the opportunity or power of the Department of Justice to prosecute violations of the law by whomsoever committed and that if he could have separted the rider from the rest of the bill he would have vetoed it.

Referendum Number Four:—Banking and Currency Bill

In anticipation of the introduction of the currency bill a strong standing Committee on Banking and Currency had been organized. The Owen-Glass bill was introduced late in June and the Committee met in Washington, July 7. After careful study of the provisions of the bill, conferences with its promoters and observation of the situation existing in regard to its passage, the Committee united unanimously in a report to the Board of Directors, dated July 11, recommending specific amendments to the measure. The Board ordered the report submitted to referendum. The pamphlet was carefully prepared and sent out on August 26. The vote closed October 10 and was canvassed by the Board at its meeting in Detroit, October 13 to 15, with the result that it was found that the Chamber was committed in favor of the report as a whole and of each of the seven propositions in the report for important amendments to the bill which were submitted for a separate vote. The bill was then before the Senate Committee to which a request was immediately transmitted for an opportunity to present the result. This was granted and a delegation composed of President Wheeler, Mr. Wallace D. Simmons, Chairman of the Chamber's Committee, and two of his colleagues—Mr. Edmund D. Fisher and Professor Joseph French Johnson of New York, were given full opportunity to explain the significance of the referendum and the methods followed in securing the opinion of the business organizations. No more striking example of the force and influence of public business opinion thus carefully ascertained and brought to a focus has yet been presented than the part that this Chamber took in perfecting the currency bill which has recently become law.

Referendum No. Five:—Bureau of Foreign and Domestic Commerce

Referendum Number Five was on the approval of a report by the Chamber's Committee on the Department of Commerce relative to the expansion of the powers and functions of the Bureau of Foreign and Domestic Commerce in the promotion of American trade in this country and abroad. The referendum was submitted on November 8 and the vote closed December 23. The report was approved by a vote of 624 to 3 and the result transmitted to the House Committee on Appropriations for consideration in connection with the appropriations to be made for the Department of Commerce for the fiscal year ending June 30, 1915. The report closely followed the plans for the development of the Bureau submitted by the Secretary of Commerce, Hon. William C. Redfield.

Referendum No. Six:—Legislative Reference and Bill-Drafting

Simultaneously with Referendum Number Five, Referendum Number Six upon the question of the establishment by Congress of a bureau or bureaus of legislative reference and bill-drafting was submitted. This question was proposed by the Railway Business Association and held by the Board to be one of national character. The vote in favor of the proposition was 625 to 16 opposed.

Other Questions Submitted to Board

A number of other questions national in character have been submitted by organization members which have not been sent out to referendum; first, because it is obvious that only a limited number of questions can be handled in this elaborate way in any one year; secondly, because in the opinion of the Board the time was not ripe to submit the question or it should be subordinated and give place to others of greater and more immediate consequence. On presentation of these views the organization member concerned has invariably shown the courtesy of withdrawing or postponing its request. The report of the Chamber's Committee on Patents, Trade Marks and Copyrights would have been submitted to referendum had it been possible to complete the pamphlet 40 days in advance of the Annual Meeting as prescribed by the By-laws. As it is, this report has been sent out in printed form to all the members of the Chamber and will come before the Annual Meeting, February 11.

FEDERAL CHARTER

The Board has persisted in its efforts to secure from Congress a national charter for the Chamber, giving to it the recognition of its national character and the standing among national bodies of countries the world over to which it is entitled. In 1913 the bill to accomplish this purpose was favorably reported without dissent by the House Committee on Judiciary but considerable opposition to it developed both in the House and in the Senate among members who from apparently deep rooted convictions look with alarm upon the granting of federal incorporation to any organization, however praiseworthy and disinterested its purposes. Through the efforts of Hon. James Francis Burke of Pennsylvania, its introducer, the bill passed the House but too near to the close of the session to admit of its being taken up in the Senate. The bill was reintroduced in the special session by Senator Fletcher of Florida but has not been reported from committee to date. In view of the opposition, it is a matter for serious consideration whether the Chamber should not be incorporated under State or District law, although in neither case do existing laws fit the circumstances and the scope of this National Chamber, rather than to continue without incorporation.

OTHER ACTION BY THE BOARD

The Board has had a variety of other matters not suitable to be dealt with by referendum brought to its consideration during the year. Among the more important may be mentioned the renewal of membership in the International Congress of Chambers of Commerce and Commercial and Industrial Associations. The Chamber was represented at the meeting of the Permanent Committee of the International Congress in London last May by Messrs. J. Randolph Coolidge of Boston, Bernard Shoninger of Paris, and Elias Michael of St. Louis. Mr. Coolidge and, at the suggestion of Mr. Michael, Mr. W. W. Kincaid of Meadville, Pa., also attended the conferences on the English check system in London. The Board has taken under consideration for presentation to the proper United States authorities the resolutions adopted by the International Congress at its last meeting in Boston and proposes that the Chamber shall be represented at the next meeting to be held in Paris in June, 1914.

The Chamber was instrumental in securing exemption from the income tax of commercial organizations not organized for profit and in advocating the establishment of courses for the training of commercial secretaries in connection with our leading universities. One such course is in full operation as a graduate course in the Harvard School of Business Administration. The Chamber was represented at the International Congress of Customs Regulation held in Paris in November, by Mr. Bernard Shoninger of Paris, and Mr. Frederick Bode of Chicago. Their report has been recently published by bulletin. The Board has also appointed representatives to attend the Conservation Congress, the Mohonk Conference on International Arbitration, and to take part in the trip organized by the Southern Commercial Congress for the purpose of studying rural credits in Europe. Its officers have held conferences with representatives of the Japanese Chambers of Commerce who visited this country last summer for the purpose of establishing more cordial relations between the two nations. Mr. John T. Lenfestey of Chicago has been designated as the representative of this Chamber to visit the leading commercial organizations in South American countries and extend to them a cordial invitation to send representatives to this Annual Meeting. Mr. Lenfestey generously volunteered to render this service wholly at his own expense. Through correspondence the Board is attempting to establish and is establishing a cordial interchange with national bodies in European countries. It has taken up with the proper authorities the resolutions adopted at the last Annual Meeting and has noted with satisfaction the reaffirmation by President Wilson of the consular and diplomatic orders providing for examination for entrance to the service and promotion from grade to grade, as well as the recognition given by this country to the Republic of China.

COMMITTEES

The organization of committees, both standing and special, has steadily progressed until there are now over 160 business men throughout the country, carefully selected with a view to their knowledge of the subjects they are to deal with, who have undertaken to give the necessary time to committee work in the service of the Chamber. Some difficulty has been encountered in securing results through meetings in group committees, as originally planned, in different sections of the country because of the tendency of different groups of the same committee to deal with different subjects and the difficulty of intercommunication. Better results have been obtained by starting with a meeting of the full committee at some central point for the purpose of planning out the work and this course will be followed in the main in future. General Chairmen have been appointed in order to coordinate the work of the separate groups.

The standing Committees on Tariff and Taxation, Banking and Currency, Patents, Trade Marks and Copyrights, Vocational Education, Statistics and Standards, and the Special Committee on the Department of Commerce have submitted reports to the Board during the year. The Committee on Federal and State Regulation has now under consideration, with a view to a report at an early date, the proposed antitrust legislation. The Committees on Latin-American Trade, Consular Service and Fire Waste are fully organized and at work. A number of special committees to deal with particular subjects including those of commercial arbitration, industrial disputes, the flood situation in the Mississippi Valley have been provided. For the disinterested and self-sacrificing service rendered by members of committees this Board takes occasion to express its sincere gratitude.

CONCLUSION

A detailed and complete review of all of the work undertaken by the Board throughout the year would be impossible within the reasonable limits of a report. Enough has been given to indicate the methods and the lines of activity which have been followed in building up this national organization, which it should be remembered has had an active existence of only eighteen months. If we may be permitted to glance for an instant at the future we believe that we are safe in stating that a solid foundation of service to the business interests of the country and thus to the people of the country at large has been laid. Many problems of operation still remain to be solved and doubtless errors have been made which will require correction, but the vision of those who conceived the National Chamber, the vision of service, of clearly ascertained and unitedly expressed national business opinion has been proved practicable. Ability to work in cooperation with administrations of different parties and with Congress avoiding the pitfalls of politics, and indeed, without consideration of politics in any way, has been shown. The Chamber is a living working entity and as such, with changes in organization and policy as experience may dictate, should continue to command the support of the American business men organized in local and national trade organizations throughout the country, for whom and by whom it was created.

President Wheeler's Annual Address on the Scope and Future Value of the National Chamber

I RATHER hesitate to add to this lengthy report from the Board of Directors, which, although lengthy, has been I trust, of interest to you, because for the first time your Board has been able to outline to you, in concrete form, something of the work it has performed and the problems which have come before it, and here in this report has given you something of the real work of the organization in bringing public opinion to bear upon certain questions.

In supplementing the report of the Board of Directors by an address from your president, it has seemed to me that I should not endeavor to speak to this body in any form that would make good reading, but rather that it should be the word of a retiring officer who has been interested in the work of the organization from the beginning and more as a heart to heart talk with the members of the Convention who will carry on this work throughout the many years to come. So in this address that I shall make—and I am going to see that you adjourn at the hour that has been fixed for adjournment—I am going to give you simply a heart to heart talk as to the results of the twenty-two months that I have tried to guide this organization.

If today I could pass in review before you the commercial federations of the world, you would find, as you examined them one by one, not one that in point of number of organizations federated, or in numerical strength of the units, compares with that organization or federation known as the Chamber of Commerce of the United States of America, the newest of all the federations in the international family; because, while but twenty-two months since your organization meeting was held has passed away, and there has been, as has been stated, eighteen months or less of actual labor in connection with the upbuilding of the organization, the picture that I would like to fix indelibly in your mind is this: 516 or 520 organizations forming a base and that base not a straight block, but a base that extends from its peak or top outward to a footing of 250,000 business men and business firms. On that foundation of 520 organizations, with a quarter of a million of business men and corporations, you are building now, as a result of last year's by-law provisions, an individual membership as a superstructure capable of being drawn into the service and already carefully selected from all parts of the country. Seventeen hundred and sixteen such individuals have been added to the force. Now does that present to you a picture that means anything? This little time ago all business organizations were in a state of chaos when it came to expressing national business opinion. Today there is the great foundation spreading its lines out so broadly that it never can be undermined, and the superstructure that is being built upon it is a superstructure carefully selected and well distributed and having individuality, in every part of the United States, capable of supporting and sustaining and aiding in the growth of this great work.

TYPICAL BUSINESS MEN IN ACTION

I suppose if you had been chosen, any one of you, as a member of that first board of directors twenty-two months ago, you would have done exactly what your board of directors has done, because that action has been typically American and typical of American business men: not to sit down after a task has been put upon you and say, "Yes; there is a need for a great American organization, and we are ready to carry out the bidding of that organization, and here we are in a receptive mood to accept the organization applications as they come, together with the resources that are handed to us, and as we receive them to put into motion this organization." How un-American that thing would have been. That body of men which you chose, doing just what you yourselves would have done, immediately visualized the greatest possibility that could arise, under a condition like this, in the organization of a Chamber of Commerce. It looked out into the future and saw the possible number of organizations to be affiliated. It saw the tremendous business interests, so widely scattered, that needed to be brought together, and, visualizing that picture in their own minds, they said, "The task is worthy of any effort we may make, and we will go ahead as typical Americans and we will create that organization which will not only be typical of American business, but representative of American business."

Now that is the reason, gentlemen, that all through these twenty-two months every time your board of directors have met we have found ourselves fully three months ahead of our own plans and our own resources, but we have seen a vision for you, and that vision today, happily, is a concrete representation of a thing that cannot be broken up. In the days that have gone, when it has been the effort of business men to create national organizations in the interest of business, they have been created and have rendered a service, but not upon the lines of broad democracy that were fortunately laid down for this organization at its inception. Here for the first time we have the evidence that the time was ripe; that the demand for the creation of this force was before the people of the country; that a period of reconstruction of many of our old-time ideas was about to begin or was actually under way; and that business must come together as a unit with a medium for the expression of its opinion to the sources to which that opinion should be expressed, whether legislative or executive, in a way that would be absolutely representative of every nook and corner of the United States.

The field force has combed this country over during the past two years. We have sent men, and they have cheerfully gone, into small communities as well as large communities until in the roster of the Chamber of Commerce today you will find just as many cities of 2,000, 3,000 and 5,000 population in proportion to the total number, as you will find those of the greater centers. These arms of the Chamber of Commerce reach into every community, in order that when American business wishes to speak it may go to Congress or to the Executive and say, "This is the opinion of American business, not from New York, not from Boston, not from San Francisco or Chicago, but from that group of 500 communities, or nearly so." All classes of business and all classes of business organizations can thus speak to Congress, or to the Executive, and say, "This we believe to be the business opinion upon that particular subject."

I know as a result of our experience during this year that for the first time in the history of our country such an expression has been made to Congressional committees, and those committees, gentlemen, are anxious for such expressions and are willing to receive them, and, in so far as they may do so, to be guided by them. You must, however, make it apparent to those men who are called upon to listen to your views that they are not personal views; that they are not community views; and that they are not trade views, but absolutely national, representing the American business opinion, and they will be heeded and your suggestions will be incorporated into legislation.

PRAISE FOR OFFICE EFFICIENCY

I want to pay my word of thanks at this time to two bodies of people who have done much to assist in the success of this Chamber, and I am not speaking of our Board of Directors—I have said my word to them, and you, too, have been good enough to confirm that by a vote of thanks expressed to the members of the Board. Before you leave Washington I want you to look in at your headquarters. There is not a man here having need for representation in Washington, frequently of a confidential character, that will not find a machinery established and installed in that Washington headquarters which his money cannot buy and which he could not establish if he would, because it is efficient beyond that which any one individual or any one organization or corporation could establish. I want to pay my word of gratitude to that force that, in my knowledge, since the beginning of that office, have never known what it was to look at the clock. I have been in Washington—and they say I am rather a hard taskmaster—working until 11 or 12 o'clock at night, and there has never been a single objection from a member of that staff to remaining until the last thing that was to be done had been completed.

One afternoon two gentlemen from Chicago happened to be in Washington, and one said to the other, "Being Saturday, of course, there will be no possibility of our seeing the headquarters of the Chamber of Commerce of the United States, but if we can do no more than see the extent of those offices, I think I would like to go up into the building." They tried the first door and it was open, and at four o'clock Saturday afternoon that whole force was there and had never given a thought, although it was mid-summer, to leaving, because there was a task to be performed. Those men returned to Chicago and said, "You are a thousand miles away from your staff at headquarters, but they do not need any supervision; they were on the job on a most impossible day and under conditions when ordinarily our own forces would have scattered long since and been at their pleasure instead of at work, and we owe a debt of gratitude to them for this service."

We owe, likewise, a debt of gratitude, gentlemen, to our field staff. It is not an easy thing to gather together from different parts of the country field men who are not only competent to creditably represent a great organization of this kind, but who are willing to sacrifice their own home comfort and spend 200 days out of 365 on the road, and even more if necessary, visiting small communities and large communities and representing your interest and calling upon those organizations to join in this great federation. That necessary information cannot be carried to the organizations of the country through the medium of printed matter. Personal touch with and explanation to the board of directors and conferences with individuals prominent in the business life of these communities is absolutely necessary to the successful upbuilding of this organization. The members of your staff have passed up and down this country during the past year and have been in pretty nearly every State of the Union. They have not only visited organizations on behalf of the Chamber, but, wherever called upon to exercise their influence to more greatly solidify the elements of a community or of a line of business, they have done so as good evangelists for a very good cause.

TRADE AND COMMERCIAL ORGANIZATIONS INTERLINKED

Now, I want to speak of two or three things in connection with the organization work. I said to you a little while ago that this organization was composed of two classes, distinct classes, of interests. They are interlinked, because the trade organization, made up of a group of trades or of a single line of business, through its membership is interlinked with every community organization in the community in which the plant or the house or the factory is located. In that respect

President Wheeler's Annual Address (*Continued*)

they have a double relationship, but there is a distinct service that may be rendered to each, and, hereafter, the task of the Chamber of Commerce of the United States is not going to be so much the organization of the Chamber as it is the organization of a service to the members of the Chamber. We have today in the five hundred odd organizations more than 50 per cent of all the organizations in the United States practically now available for membership in this Chamber of Commerce, and, if you shall at the conclusion of this session, or a little later, adopt the by-law which has been provided for your consideration with respect to a limitation of individual members, in my judgment, the seventeen hundred and more now selected will by the first day of July, 1914, be practically 5,000, because then the limitation will be placed upon it. Thus possibilities for organization will grow less for your field force, but the service must be rendered by that force and by the headquarters representing the same definite, concrete thing that we are giving to these classes of our members.

Two things only I want to speak of to the national trades organizations not interested in community development, but interested in those things which underlie business operations. Those organizations want this Chamber, as I see it, to be active with the bureaus of the Departments in Washington, not only to make those forces gathered and paid for by the Government efficient in their work, but to make that work available to all the commercial interests of the country, in order that the bureaus may be supported for a purpose, and that the results of their investigations and findings may, through the Chamber of Commerce, if you please, immediately find its way out into the channels where it will do the most good. We can not hope, as a Chamber of Commerce, to help a national trades organization with respect to its own upbuilding. They upbuild because they are banded together, owing to the fact that a need exists for that kind of co-operation, and a recognition of the fact that in the complexity of our business situation today only that kind of co-operation of the trades makes possible successful business. But in the community organizations there must be established, as has already been drawn to the attention of the officers of the American Association of Commercial Executives and the members of the commercial bodies, a clearing house whereby those things found to be beneficial by a community organization in one city or one part of the country may be recorded in that clearing house and distributed to all the communities of the country, saving an infinite amount of corespondence and bringing real efficiency to bear upon these problems which are common to all communities and in which practically every city finds a solution along very much the same line. That service this Chamber of Commerce can render as a concrete thing to the community organizations, as it will be able to render the other service of which I have spoken to the trades organizations.

THE DEATH OF THE LOBBYING SYSTEM

In the best of faith I want to offer a criticism to American business in its relation to the Federal Government. You know what gave rise to the Chamber of Commerce of the United States. When the President of the United States called that organization meeting to account for the fact that economic legislation which had taken place during the three years of his term had taken place without the competent advice of business men, and, in that message to you he said, "With a period of constructive legislation before us and upon us it is obviously the more necessary that American business shall so organize itself as to be able to speak through a common medium and with an accredited voice regarding these processes of legislation which are so closely linked to the successful operation of American business." That gave rise to it. You will admit, if you are fair-minded, that business men in the years that have gone have come to Washington and besought committees and representatives in Congress and the Executive for those things beneficial to their own interest and were rather inclined to demand those things that they selfishly desired, not harmful in many instances, but, nevertheless, predicated solely upon the thing that they saw existed in their own business. Everywhere American business, in so far as our national legislation is concerned, has been confronted with the statement by those men sent here to represent us, "You do not come representing more than an individual interest or an individual opinion or a community opinion." I tell you, I for one am not surprised that such local interest or individual opinion has not, in many cases, prevailed in the councils of this nation, because, seemingly, just as soon as presented there was the claim at least that selfish interest animated the request that was made, and as such it was impossible to give it the freest and most impartial consideration. American business in the years that are past has asked for many things to which American business was not entitled, and, in my judgment, gentlemen, the new day that has come through the creation of this Chamber of Commerce of the United States finds absolutely the death for all time of a lobby system (applause), but it finds, likewise, for all time the death of those contributions to political parties which have their hands extended for service to be rendered to special privilege or special interests (applause). It also brings out at last that new day which American business stands so ready to grasp by the hand and help to share in; that day when American business will by endeavoring to get a consensus of opinion from the country at large present that opinion in intelligent form to the Executive and to the legislative branches of this government and appeal, not through a lobby in Washington, but through the constituent members of this great organization, to their own representatives whom they have a right to approach as having sent them to Washington to legislate for them; that new day which will be a more intelligent expression of opinion and which will give us a much finer and more intelligent legislation.

I want to call to your attention this fact, that, as stated at the organization meeting of the Chamber two years ago, the period is here of readjustment and of reconstruction of much of our old ideas of legislation that is economic and that bears directly upon business life. I want you to recognize the fact that when a referendum is issued upon any subject and the result of that referendum is made known to a Congressional committee or to the Executive, and you do not find that that Congressional committee or Executive accepts it as being a basis for action and tries to make it effective, do not feel that your Chamber of Commerce of the United States has not been efficient. Let me call to your attention the fact that on any piece of legislation that is worth while and that is far-reaching in its influences upon the business world it is a matter of evolution and not a matter to be settled because you as business men vote in favor of its introduction. This Chamber of Commerce of the United States has taken six referenda, one of which happens to have been embodied in legislation or in part, at least, in the introduction of the currency bill and its passage. The others are still to come, and we as a Chamber of Commerce of the United States, as we gather together from year to year, will, I hope, reaffirm the position of the business men of America with respect to those questions still remaining unsettled, and with new life will again press it home, being absolutely assured that as the years go by what will happen in the future will be only that which has happened in the past, the creation of a force of public opinion which gradually gathering itself in strength and in volume will impress itself upon the legislative forces of this country to the enactment of that legislation which we desire. In the years that are to come, if we are successful in seeing each of these projects here treated in 1913 by referendum ultimately brought about, and we are patient and willing to study the needs for consideration from the other side and willing to consider what Congress has a right to ask in order that it may be well assured that this opinion expressed is truly the national opinion; then, if we are that patient and that conservative with respect to our action, in my judgment; every one of these questions treated by referendum will in time to come, and not in the distant future, be found actually embodied in our national legislation. But do not grow discouraged because out of these six referenda taken but one has found its way into actual legislation.

NEW OFFICERS TO BRING NEW VIGOR

Now, gentlemen, one word about the construction of this organization. Your organization meeting was good enough to give me the honor of presiding as a temporary chairman and then, not of my own wish, but by force, practically, as permanent chairman; and then as president for the first year and then as president for the second year. I want to say to you in all candor that, while that service has been sometimes a little arduous, I would not give the value of the friendships made over this whole country and of the breadth of vision which has come as a result of that service for any price that could be laid before me. But I want to call your attention to the fact that the life of this organization depends upon the fact that it shall not be built upon the personality of any one man or group of men, and that no man who is called into your service should be asked to serve more than a period of two terms. In two years, if he be the man that you will pick, he will have put into the life of this organization his energy and his ideas and he will find himself at the end of those two years practically devoid of that force which the President of this organization ought to have and of that originality of thought and that bringing of freshness to bear upon the problems of the Chamber which, in my judgment, is absolutely essential to the good of this organization. It was positively agreed with me at the beginning of this second term that no further effort would be made to have me accept any further service with this body. It is for that reason, because the understanding has been so clear, that I can speak as frankly as I do today, for I am going out of office and my successor, who will be a more efficient man, will come into office and your work is going on infinitely better because of that transfer. I ask of this body, and I hope it may be made of record, that without a by-law we establish a precedent, in so far as it may be possible to carry it out, that the terms of service of the chief executive of the Chamber of Commerce of the United States shall not run beyond a period of two years, and that men in this organization may know, whether they are from Maine, from California, from Louisiana, or from Minnesota, that having rendered a service to this great body they may aspire to any office in the activity of this body because of the fact that there is no fixed term of office that holds one man in power for a limited number of years. The life of your organization is going to depend upon the new blood which you can infuse into the Chamber of Commerce of the United States, fresh and enthusiastic, bringing new ideas and new ambitions into this great work. As a matter of fact, whether it be as a director, a vice-president, a treasurer, or a president, it is worthy of the best service that the best man in this country can give; because it stands, in my judgment, as an organization bringing hope for the permanence of conditions in this country through creating a force comparable to every other force created heretofore; competent to combat, where combat is necessary; competent to counsel, where counsel is desired; competent to set over against these other forces an organized business opinion that shall be truly representative of the whole nation and in fact, that opinion which American commerce desires to have accepted by our national government. Gentlemen, this organization is not formed for the purpose of creating a great force to fight and antagonize any other organized force, but the day of organized forces makes it just as essential that the commercial interests of this country should be an absolute unit as labor or as agriculture, or as any force that has been created and has been effective in its operation in the past years. So these great forces which have to do with the development of our nation and her prosperity—American business represented by its Chamber of Commerce of the United States; the agricultural interests represented by their organizations so well formed; the labor interests with the same right that business has of gathering itself together in a concrete body to represent its own interests—these three great national

President Wheeler's Annual Address

(Continued)

interests protective of national prosperity, not for war but for an agreement together upon those economic questions, subjects of legislation, which must come into Washington and concerning which we must be in part the guiding hand. That is what your organization is for.

NATION ABOVE PERSONALITY

I want that there shall go out from this convention no uncertainty with respect to this organization. It is today a great national force. It is known from ocean to ocean and from Gulf to Lakes. The press has knowledge that it exists and exists for a beneficent purpose. It is already a force, concrete and well-formed, and in existence, and it will not die. It will go on in strength and in power and in influence, *greater as the years pass, but I want you to agree with me today that in the administrations* as they shall come and go from time to time, we shall never say that that man is not as good as the man who went before, or that that board is not as good as the board that preceded it. Let us know that in the operation of a chamber of this kind a man who may be of less stature or of less value will, through the very influences of this organization and the importance of the task placed upon *him, rise to the occasion and become as great or a greater* executive than the man who may have preceded him. Every director coming into relationship with this organization will be the same, and the one thing above all others that I covet for the Chamber of Commerce of the United States is, that, come administration and go administration, there shall be pledged here to day never to criticize, never to question the ability, and never to question the integrity of that particular man or *group of men to lead to a higher success than has heretofore* been achieved. If you will pledge that with me, then I know you will gain the picture of the Chamber of Commerce which is in my mind, the greatest organization that has ever existed in this country, greatest in the wealth of its possession, greatest in its democracy, greatest in its beneficence, greatest in its influence upon American life, and greatest because the minds of the men, charitable and philanthropic as business men are, will absolutely make, as they serve your chamber, and you will make as you record your votes upon referenda, self interest second, commercial patriotism first, nation above personality.

Reports of Special and Standing Committees

AN opportunity was offered at the Second Annual Meeting to bring before the delegates and those in attendance some phases of the Committee work, which is so important a part of the activities of the Chamber of Commerce of the United States.

On February 11, the Committees on Patents, Trade Marks and Copyrights (James G. Cutler of Rochester, N. Y., Chairman); on Banking and Currency (Wallace D. Simmons of St. Louis, Mo., Chairman); and on Statistics and Standards (A. W. Douglas of St. Louis, Mo., Chairman), reported.

As the report of the Committee on Patents, Trade Marks and Copyrights has already been placed in the hands of our members, an abstract is included here:

ABSTRACT OF PATENT REPORT

A Court of Patent Appeals is favored by the Committee. This court is proposed to do away with the condition whereby a patent may be declared valid and infringed in one Circuit Court of Appeals and held to be invalid in another.

The report favors an expert commission to investigate patent laws, and urges that no other patent legislation be enacted until this commission has made its report. In a memorandum on this subject the Committee says:

"As to the recommendation for the appointment of an expert patent commission, we have to say that the whole subject of patent legislation is so complicated, so far-reaching in its effect, so dependent upon a knowledge of the history and operation of existing law and so far removed from the understanding and intelligence of the average citizen, particularly from that of those who are likely to be active in attacks upon successful business enterprises, that the wisest course than can be pursued is to induce the Congress after passing a bill creating a Court of Patent Appeals, to postpone all other patent legislation until a special commission can be appointed to consider the whole subject, and recommend to the Congress what, if any, other legislation is demanded in the public interest."

BANKING AND CURRENCY

The report of the Committee on Banking and Currency was presented by Mr. Wallace D. Simmons, Chairman. His report reviewed every step taken by the Committee between July, 1913, and the time of the passage of the Federal Reserve Act. He showed what changes had been brought into the Federal Reserve Act by study and reprsentations made by the Standing Committee. The introductory sentences of the report will be widely considered.

"We, of the United States, have been slow to follow the older, highly civilized nations in their recognition of the fundamental principles that the chief function of a commercial bank, like that of currency, is to serve the interests of commerce.

When we remember that currency is simply a device to facilitate exchange, that is, to make it more easy to do business, and that commercial banks are agencies to enable those who have surplus funds to lend them temporarily to others for business purposes, we recognize the propriety of prompt and intelligent attention on the part of the business men, whenever it is proposed to devise a new system of banking and currency, because that is primarily a business proposition.

To insure due adherence to this principle, the great European National Banks are governed by business men rather than by bankers. For instance, a deposit-banker may not, by custom, be elected a Director of the Bank of England, the requirement being that a Director of that institution must have his chief financial interests in commercial enterprises, and but a limited investment in banking.

A prominent New York banker was told by an officer of the Credit Lyonnaise that his bank could pay off its deposits promptly and without trouble by

CHAIRMEN OF COMMITTEES MAKING REPORTS

1. H. E. Miles, Racine, Wis., Committee on Vocational Education; 2. W. D. Simmons, St. Louis, Mo., Committee on Banking and Currency; 3. John H. Fahey, Boston, Mass., Committee on Department of Commerce; 4. James G. Cutler, Rochester, N. Y., Committee on Patents, Trade Marks and Copyrights; 5. Powell Evans, Philadelphia, Pa., Committee on Fire Waste.

going to the Bank of France and discounting its commercial paper, of which it had about two hundred million dollars. "Why," said the American, "is there any law which would compel the Bank of France to discount your commercial paper without limit?" "Law?" was the reply. "Yes, the law of its being; that is what the bank was created for."

The purpose of such banks, developed along the lines of public utilities, is primarily to serve commerce; secondarily and incidentally, to make money for their stockholders. This fundamental principle should be kept constantly in mind when considering the history of the recently enacted legislation for the reformation of our Banking and Currency System."

STATISTICS AND STANDARDS

The report of Mr. A. W. Douglas, of the Committee of Statistics and Standards, was made verbally and referred to the summary of business conditions which was mailed early in January to the members of the Chamber, and to the methods by which the facts were brought together. Mr. Douglas explained the future plans of the Committee.

FIRE WASTE AND VOCATIONAL EDUCATION

On the afternoon of the 13th, two Committees reported; the Committee on Fire Waste of which Mr. Powell Evans of Philadelphia is Chairman, and the Committee on Vocational Education, of which Mr. H. E. Miles of Racine, Wisconsin, is General Chairman.

Mr. Evans' report included impressive statistics relative to fire waste. It brought out the fact that western Europe's fire waste and cost of insurance are only one-tenth of that in the United States and Canada.

Special attention was darwn to the careful work which is now being done in the city of Philadelphia, resulting in a reduction of one-third in the fire loss of Philadelphia in a single year. Impressive sentences from the Committee's report are here included:

"The Nation has been living too extravagantly and has now reached a condition where economies, particularly those that abate useless waste, must become a controlling policy in our national life. About half of all the fire waste arises from dirty, careless and ignorant living buildings; and this situation accounts for virtually half of all bad health and bad morals. This National Chamber with its widespread and growing organization of business men should become a leader in this movement, and draw into concert with its efforts the advocates of sanitation and moral living who must travel the same road in actual practice to accomplish their various ends."

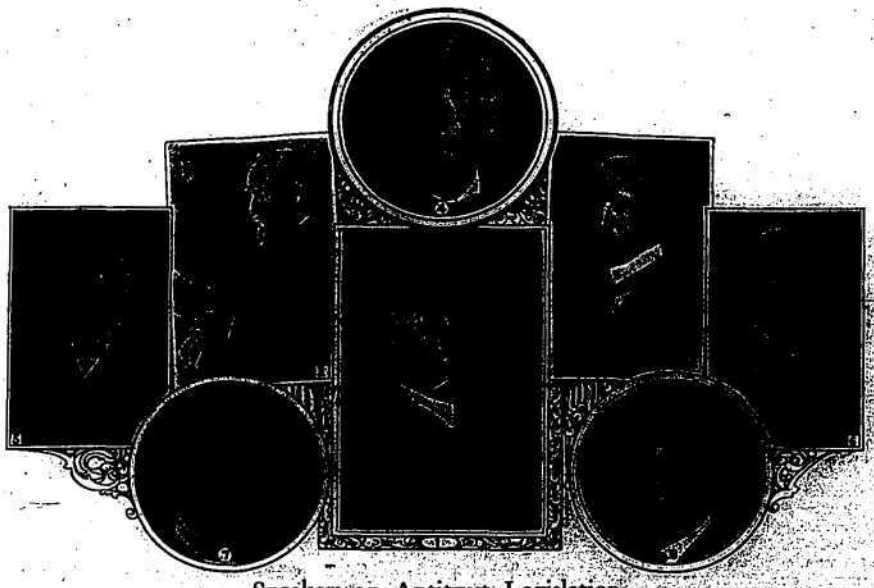
VOCATIONAL EDUCATION

The report of Mr. H. E. Miles, whose interest in vocational education is known the Nation over, was delivered verbally. It showed the extent to which his Committee had exerted influence during the year in attracting attention to federal aid in standardizing vocational training throughout the Nation. In view of the fact that Secretary Wilson of the Department of Labor, on the evening of February 11, in his address on "The Relation of the Department of Labor to Industries and Commerce," had also appealed for vocational education, the Second Annual Meeting thus secured the views of labor and of employers on the same subject. Close accord between labor and capital was thus *shown, in the campaign for an education that shall prepare for life.* References to Secretary Wilson's remarks regarding education will be found on page 2.

The report of Mr. John H. Fahey, Chairman of Special Committee on the Department of Commerce, was not made owing to the demands made upon the time of the Convention by other subjects. The work of the Committee of which Mr. Fahey is Chairman is, however, fully known by all members, for it will be remembered that it led to a Referendum vote in which the decision of the National Chamber was overwhelmingly cast in favor of increased support and broadened activities for the Bureau of Foreign and Domestic Commerce. The Committee on the Department of Commerce will make other researches and reports relative to other phases of the Department's activities.

National Opinion on Antitrust Legislation

Of supreme importance in reaching an understanding of the opinions of men from various states and differing official positions, on proposed antitrust legislation, were the speeches delivered before the Second Annual Meeting. In a general way they held to considerations affecting five questions:—1. Concentration of Industry in the United States; 2. Holding Companies; 3. Rights and Privileges of Private Parties where the Government had proceeded under the Sherman Law; 4. The projected Interstate Trade Commission; 5. As to the efficiency of the Trust form of IndustrialOrganization. In order that the speeches as a whole may be readily compared, by the readers of THE NATION'S BUSINESS, with the legislation discussed, there is here included the text of the Sherman Law, of the three other measures tentatively put forward, and also an adequate summary of S. 1460, introduced by Senator Newlands, and H. R. 12120, by Representative Clayton, "To create an Interstate Trade Commission, etc.," on January 22nd—the two bills identical.



Speakers on Antitrust Legislation

1. Hon. Wm. C. Redfield, Secretary of Commerce; 2. President Charles R. Van Hise, University of Wisconsin; 3. Victor Morawetz, New York City; 4. Frederick P Fish, former President American Telephone and Telegraph Co.; 5. Henry R. Towne, President Yale and Towne Manufacturing Co., former President of Merchants' Association, New York City; 6. Prof. Henry R. Seager, Columbia University, N. Y.; 7. Guy E. Tripp, Chairman, Board of Directors, Westinghouse Electric and Manufacturing Company; 8. Louis D. Brandeis, Boston, Mass.

The Sherman Law

AN ACT To protect trade and commerce against unlawful restraints and monopolies

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SECTION 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SECTION 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or any conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SECTION 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SECTION 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SECTION 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SECTION 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SECTION 8. That the word "person," or "persons," wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, or the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Additions to Sherman Law

A BILL To supplement an Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," is hereby supplemented and amended by adding thereto the following:

"SECTION 9. That it shall be deemed an attempt to monopolize trade or commerce among the several States, or with foreign nations or a part thereof, for any person in interstate or foreign commerce to discriminate in price between different purchasers of commodities in the same or different sections or communities, with the purpose or intent to thereby injure or destroy a competitor, either of such purchaser or of the seller: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of transportation: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in interstate or foreign commerce from selecting their own customers, but this provision shall not authorize the owner or operator of any mine engaged in selling its product in interstate or foreign commerce to refuse arbitrarily to sell the same to a responsible person, firm, or corporation who applies to purchase.

"SECTION 10. That it shall be deemed an attempt to monopolize trade or commerce among the several States, or with foreign nations or a part thereof, for any person in interstate or foreign commerce to make a sale of goods, wares, or merchandise, or fix a price charged therefor or discount from or rebate upon such price, on the condition or understanding that the purchaser thereof shall not deal in the goods, wares, or merchandise of a competitor or competitors of the seller.

"SECTION 11. That nothing contained in section nine or section ten hereof shall be taken or held to limit or in any way curtail the meaning and effect of the provisions of section two of this Act.

"SECTION 12. That whenever in any suit or proceeding, civil or criminal, brought by or on behalf of the Government under the provisions of this Act, a final judgment or decree shall have been rendered to the effect that a defendant, in violation of the provisions of this Act, has entered into a contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, or has monopolized or attempted to monopolize, or combined with any person or persons to monopolize, any part of the trade or commerce among the several States or with foreign nations, the existence of such illegal contract, combination, or conspiracy in restraint of trade, or of such attempt or conspiracy to monopolize, shall, to the full extent to which such judgment or decree would constitute in any other proceeding an estoppel as between the Government and such person, constitute as against such defendant conclusive evidence of the same facts and be conclusive as to the same issues of law in favor of any other party in any other proceeding brought under or involving the provisions of this Act. In all cases where any person who shall have been injured in his business or property by any person or corporation by reason of anything forbidden or declared to be unlawful under the provisions of the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety, and who at the time or previous to the institution of any such suit by the United States as aforesaid has a cause of action under section seven of said Act or under section thirteen of this Act against any defendant in a suit wherein a decree or judgment has been obtained as aforesaid, the statutes of limitations applicable to such cases shall be suspended during the pendency of such suit and shall not again become operative until after the date of the final decree or judgment in such cause.

"SECTION 13. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of this Act when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate a preliminary injunction may issue."

Definitions Under Sherman Law

A BILL To include within the meaning of every contract, combination in the form of trust or otherwise, conspiracy in restraint of trade or commerce among the several States or with foreign nations, and within the meaning of the word "monopolize," certain definite offenses, and to prohibit the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "every contract," "combination in the form of trust or otherwise," and "conspiracy in restraint of trade or commerce," and the word "monopolize," as used in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, and in any Acts supplementary thereto or amendatory thereof, shall be deemed to include any combination or agreement between corporations, firms, or persons, or any two or more of them engaged in trade or business carried on in the United States between the States, or between any State or Territory and the District of Columbia or between the District of Columbia and any Territory, or between any State, Territory, or the District of Columbia and our insular possessions, or with foreign countries for the following purposes:

FIRST. To create or carry out restrictions in trade or to acquire a monopoly in any interstate trade, business, or commerce.

SECOND. To limit or reduce the production or increase the price of merchandise or of any commodity.

THIRD. To prevent competition in manufacturing, making, transporting, selling, or purchasing of merchandise, produce, or any commodity.

FOURTH. To make any agreement, enter into any arrangement, or arrive at any understanding by which they, directly or indirectly, undertake to prevent a free and unrestricted competition among themselves or among any purchasers or consumers in the sale, production, or transportation of any product, article, or commodity.

SECTION 2. That any such contract, combination in the form of trust or otherwise, conspiracy in restraint of trade or commerce, or monopoly, is hereby declared to be unlawful.

SECTION 3. That any person, firm, or corporation violating any of the provisions of this Act shall upon conviction be adjudged guilty of a misdemeanor and be punished by a fine not exceeding $5,000 or imprisonment not exceeding one year, or by both, said punishment in the discretion of the court.

SECTION 4. That whenever a corporation shall be guilty of the violation of any of the provisions of this Act the offense shall be deemed to be also that of the individual directors, officers, and agents of such corporation authorizing, ordering, or doing any of such prohibited acts, and upon conviction thereof they shall be deemed guilty of a misdemeanor and punished as provided in the preceding section.

SECTION 5. That nothing contained in this Act shall be taken or held to limit or in any way curtail the meaning and effect of the provisions of the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

(The Section relative to Holding Companies is not yet announced.)

Interlocking Directorates

A BILL To prohibit certain persons from being or becoming directors, officers, or employees of national banks, or of certain corporations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after two years from the date of approval of this Act no person who is engaged as an individual, or as a member of a partnership, or as a director or other officer of a corporation in the business, in whole or in part, of manufacturing or selling railroad cars or locomotives, or railroad rails, or structural steel, or mining or selling coal, or the conduct of a bank or trust company, shall act as a director or other officer or employee of any railroad or other public service corporation which conducts an interstate business.

SECTION 2. That from and after two years from the date of approval of this Act, no person shall at the same time be a director or other officer or employee in two or more Federal reserve banks, national banks, or banking associations, or other banks or trust companies, which are members of any reserve bank, and are operating under the provisions of the Act approved December twenty-third, nineteen hundred and thirteen, entitled "An Act providing for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes," and a private banker, and a person who is a director in any State bank or trust company, not operating under the provisions of the said Act, shall not be eligible to be a director in any bank or banking association or trust company operating under the provisions of the aforesaid Act.

SECTION 3. That any person who shall violate section one or section two hereof shall be guilty of a misdemeanor, and shall be punished by a fine of $100 a day for each day of the continuance of such violation or by imprisonment for such period as the court may designate, not exceeding one year, or by both, in the discretion of the court.

SECTION 4. That if, after two years from the date of the approval of this Act, any two or more corporations, engaged in whole or in part in interstate or foreign commerce, have a common director or directors, the fact of such common director or directors shall be conclusive evidence that there exists no real competition between such corporations; and if such corporations shall have been theretofore, or are, or shall have been, by virtue of their business and location of operation, natural competitors, such elimination of competition thus conclusively presumed shall constitute a combination between the said corporations in restraint of interstate or foreign commerce under the provisions of and subject to all the remedies and penalties provided in an Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies,"

Interstate Trade Commission

H. R. 12120: Mr. Clayton of Ala.: To create an interstate trade commission, to define its powers and duties, and for other purposes.

Organization: There would be five members of the Commission, not more than three to belong to the same political party. Appointments would be made by the President, with confirmation by Senate; the salary would be $10,000, and the normal term would be 7 years. The members would ordinarily choose one of their members as chairman, but for the first seven years the present Commissioner of Corporations would be chairman. (The Bureau of Corporations, with its employees and duties, would be absorbed by the Commission.)

Jurisdiction: The jurisdiction of the Commission would extend to all corporations engaged in interstate or foreign commerce, except carriers (which are left under the jurisdiction of the Interstate Commerce Commission.)

Powers: The powers of the Commission would be (1) upon complaint or upon its own initiative to inquire whether in the organization or operation of any corporation there is violation of the Sherman Anti-Trust Act, and in case it finds violation to submit the matter to the Attorney General; (2) upon request of a corporation, or of the Attorney General, to investigate the corporation in question and, in case it finds there has been a violation of the Sherman Anti-Trust Act, to make a finding fully stating the violation and "prescribing the acts, transactions, and readjustments necessary" in order that the corporation may comply with the Sherman Act, and transmit these findings to the Attorney General as advisory to him in terminating, *by agreement or suit, unlawful conditions;* (3) *upon reference of* a Federal court in which a suit in equity is pending under the Sherman Act, at any stage in the court proceedings, to investigate any question stated by the court or any proposed decree of the court, and report to the court its findings together with a copy of the evidence on which it bases its findings and recommendations; and (4) to obtain concerning any corporation under its jurisdiction "information, statements, and records of organization, business, financial condition, conduct, management, and relations to other companies"; information obtained in this way is to be a public record and is to be made public by the Commission in such form and to such extent as the Commission may deem necessary. Each year the Commission would report to Congress information and data bearing on regulation of commerce and make recommendations for such additional legislation as it deems necessary.

To effect its purposes, the Commission has power to use subpoena, to compel attendance and testimony of witnesses, production of books, etc.

Publicity: Publicity of general information about corporations, as indicated above under (4), and of findings and recommendations in connection with cases in court mentioned above under (3), would be in the discretion of the Commission. The findings and recommendations relative to a particular corporation made under (2) above would be made public only by direction of the Attorney General or of the President. Failure on the part of a corporation to give information in response to a written request from the Commission would involve a fine of $1,000 a day during the continuance of the refusal.

Status: Introduced and referred to H. Com. on Interstate and Foreign Commerce, 1-22-14.

(THERE HAVE BEEN DEFINITE STATEMENTS RELATIVE TO THE PROBABILITY OF THE ABOVE BILL COMING OUT FROM THE COMMITTEE ON INTERSTATE AND FOREIGN COMMMERCE IN A FORM DIFFERING FROM THE ABOVE OUTLINE.)

Introduction by President Wheeler

IN the beginning of this program I would like to clearly outline the attitude of the Department of Commerce of the United States, as I see it, toward this great problem. As our civilization becomes higher and the complexities of living together increase, we have all come to realize and to accept regulation as an essential function of government. The business world accepts the principle as a curb upon the over-enthusiastic and a restraint upon the avaricious. Sometimes we find it difficult to conform to all its requirements, yet there is a growing recognition that in regulation lie the elements of safety to business itself. Regulation, however, should not run counter to natural law or to that phase of natural law which we call economic law. Economic law cannot be successfully turned aside by legislation any more than the artificial can be made a complete and satisfactory substitute for the natural. It seems to me that the science of government in this city finds its most difficult problem in determining the measure of government which shall be arbitrarily exercised, one that shall not fail through weakness, one that shall not destroy through oppression. Now one of the principal functions of the Chamber of Commerce of the United States is the educational. It means to approach every subject which it discusses with an open mind. It hopes to lead business opinion and business prosperity into safe and stable channels, and in preparing the discussion of today the Chamber has tried to recognize every phase of the subject in the expectation that out of the discussion a more intelligent public opinion will be created.

We are honored with a number of speakers on this occasion, representative, I believe, of the best thought upon every phase of the trust question; men who have made a deep study of that question, men who are competent to instruct and to guide our thought. Our program necessarily being full will proceed without interruption, other than the announcement of the speakers. Introduction of these gentlemen will be wholly unnecessary to you, for they are all known as national characters and men whom most of you, I think, have met and heard on other occasions.

The Trust Form of Organization Questioned as to Efficiency

Speech of Secretary of Commerce Redfield

I HAVE the easiest of all the tasks of the day, for in introducing the discussion I have merely to insert the thin edge of the wedge and leave the wedge with those who would drive it home to do the serious labor. But because it is easy and, therefore fortunate for me, it is none the less necessary that I should make plain to you certain things. What good genius guided my thought at that particular instant to use the words "make plain?" I had no intention of using them when the sentence began, but the making of things plain is what is more needed in this whole discussion than any other single thing, it seems to me.

The first thing, then, to make plain is that the Department of Commerce is an organization existing in behalf of the commerce of the country, working to sustain it, and working to enlarge it; not having *in reserve* any abhorrent forces for its harm, but striving only to develop, encourage and aid it, and to do this with the broadest spirit of sympathy for every man endeavoring to do his work in accordance with business honor. That qualification is not meant to be too large. I feel, and have said, and now say, that the business world has not known, and has not been able to know, clearly and definitely always those things which were forbidden by law. It has not always been possible to find out the things which one might not do. It has been a transition stage in which there has been much of uncertainty and a great deal of doubt.

If there were one thing which, sitting in my factory office I should look back into the last twenty years, it would be an atmosphere of mental and legal fog. Neither you nor I have always been able to see that which we could lawfully or even morally do or leave undone, and it is for that reason, among other things, that I think it very essential that our discussion should deal with the making of things plain.

If I had a son whom I wanted to bring up in the business world, *I should put him, if I could, in a small factory, where he would have* to learn the intimate details of the shop and the office at first hand. It was my fortune to go through everything in the factory, from the bottom up. I remember very clearly keeping the books for an hour in the morning— that was all that was necessary—and in the afternoon packing such few goods as were made, marking the cases, loading them on a truck, and shipping them; in the meantime browsing around the little shop to determine the fundamental elements of the cost of production. I would not for the world have lost that training—the hunting around a little factory several hours every day, questioning everything and doubting everything until it was determined, until every conceivable factor, visible and invisible, that entered into the cost of production was a matter of intimate, personal, close daily association and knowledge. Out of that practice, which was carried through many years, and through a long period of growth from a little to a large business, I want to make a certain number of suggestions to you this morning, not in the way of policy, but in the way of suggestions as to facts.

There came one day into the office a gentleman who said that he had organized all but one of our competing concerns in such a way that if we would consent a trust could be formed which would practically control the business as it then stood. He was very desirous of having this particular concern enter into that organization. My own part in the business was but a modest one, and my senior partner took it under very serious consideration and discussed it at length with me. After a number of days we decided that the one thing in the world we could not afford to do was to enter into any such organization at all; that to do that would be to tie ourselves up with the weary and the tired ones; to give over our high average of effectiveness to a low average of efficiency, to help others at our own cost and not to aid the business of the industry as a whole. At the end of a number of days we told the promoter we would give him a good fee if he would get up his trust and leave us out. The trust was never formed. Some years later an acquaintance of mine was doing a considerable amount of business in an industry which in his temporary absence was formed into a trust. He went to the parties that formed the trust and asked them why they had not included him in their plans. They gave some reason. I do not know what, except that it was not satisfactory to him, and he accepted it cheerfully and went back into what I think at the time was considered the outer darkness. The fact was, however, that at the end of a very few years the trust had ceased to exist and the independent man that was left out was and is prosperous.

That particular trust, as other trusts, could not endure the competition of the smaller, more keenly managed independent concerns. It would be perfectly easy for me to go over with you the list of these gigantic organizations that have ceased to exist, that could not bear the burden and heat of the day. A much larger list, I think, could be easily placed before you which have entirely failed to remunerate in the way of dividends the holders of their common stock. I believe it is a fact that is easily demonstrable, but which to my knowledge has never appeared in our public discussions of the subject, that the number of these gigantic organizations which have been conspicuously successful is not very large, nothing like half of those that have come into existence. Therefore, I should like to ask this question for your thought as business men. Suppose I came to you today with a proposition to unite twenty-five concerns in various parts of the country, having their own local traditions, their own differences of equipment and management, into one company with a central office, and I said to you what you were all familiar with twenty years ago, *that this thing* was going to save largely in overhead expenses, was going to reduce the transportation and executive salaries, and was going to do away with selling cost, and put that whole thing before

Secretary Redfield's Address (*Continued*)

you, I wonder how many practical factory managers would give it today a moment's consideration. I know of many that would not. I know of many that would tell you that that is a phase of our industrial activity which is passing away. Why? Well, I know of one that had twenty factories in which the officers labored in vain through many years to get unity of operation through the twenty. I know of another with seven factories in which the effort to get the seven under different conditions of locality and transportation and climate into anything like uniformity of production-cost proved almost impossible. I know of another in which one man receiving promotion and another not receiving promotion, the heads of the two great departments failed to speak to each other for about a year. I know of another in which it was thought more desirable for some reason that subsidiary corporations *should* be formed among the directors for their personal benefit than that the attention of the officers and directors should be solely given to the business of the larger organization. It would be perfectly easy for those who know intimately the history of these gigantic industrial combinations to show that their internal politics have equaled the public politics of the nation, and to show that the effort to overcome individual differences of locality, equipment, materials and climate has been almost insuparable.

I doubt if there is any expert production engineer today who would argue any more that the way to get efficiency in cost production is to take ten; twenty or thirty factories unrelated and unite them into one gigantic organization. I believe myself that it is true, as was told me twenty-five years ago it would be true, that this particular phase of combination carries with it the seed of its own decay. I believe that that decay is already here. I believe it would be stated by most thoughtful producers today that the strength of one of these great organizations is no greater than the effectiveness of its most effective plant, and that millions have been lost in winding up the plants of minor efficiency in order to make those that are more effective carry the burden better.

The history of these organizations on their industrial side shows that process continually going on. Nay, more, I think it is a fact, and I am trying to look at this thing precisely as I used to browse around the factory myself and look for facts and not for opinion—I think it is a fact in almost all, if not all, the industries that have had these great gigantic organizations there have grown up side by side with the so-called trusts independent organizations, strong, aggressive, and carrying an increasing share of the business, and that today it is true that the concerns in these industries in which the trusts exist, which pay the largest percentage of return upon their capital, are the smaller independent concerns. I think that is absolutely true. I know it is true in some cases. It would be perfectly easy to take up line after line in which ten or fifteen years ago a trust dominated the whole situation, and show that the independent concerns, starting since, or running independently at the time, have come to be, and are now, the more profitable.

I doubt greatly if finances could be had today in any market in this country for a trust of the kind that was established twenty or twenty-five years ago. But you say we must have large production in order to get low cost. Yes; true; I admit every word of it, but it says nothing. How large? Not necessarily enormously large; not necessarily the same in any two kinds of business, and not necessarily the same in any two departments of the same factory. In one line of work a production of a thousand units will bring low cost; in another you could not afford to make a thousand units at all. In another you must make a hundred thousand, but it does not follow at all because large production is needed to get low cost that it must be huge production, or that it must be either a thousand or ten thousand or a hundred thousand units. It may be neither; it may be one or all three in the same factory. Now, I believe any expert factory manager would tell you this, that the thing that was most important in getting cost down was balance of shop and a sufficient output to keep the service continuously operating at its maximum effectiveness. He would tell you also that if 10,000 units would permit a balanced shop to operate in all its departments continuously and steadily in perfect balance, he could not afford to make a hundred thousand units, because it would cost too much. It would be very simple to lay upon this table the elements of economy arising from such an organization. They are superficial things, and anyone, as a friend of mine once said, who had a keen sense of the obvious, would discover them at once. But the elements of cost rise the moment you press production beyond the point of balance. So far as I know, that phase of it is new in the discussion of the subject, but I never knew a careful factory superintendent that did not realize it to the core. I have often wished that the factory managers talked more about this question, and that the men who have not had the experience talked less. Let me take, for example, a certain tool. We will call it a wrench, if you choose. I believe it to be a normal experience that you can not afford to make less than a certain number, because the cost is too great; that you find, let us say, that you can not afford to make a thousand at a "run." Factory managers always consider things at a "run," not by the year. They know too much to make it in several "runs," if they can make it in one. You find that you can afford to make 5,000. You find that you can afford much better to make 10,000; and you are doing pretty well on 10,000. When you make 20,000 you *still do better, but very little better.* The percentage of cost reduction between 5,000 and 10,000 is very large; the percentage of reduction between 10,000 and 20,000 is very small, and you can not afford to make 30,000 at all; they cost too much. That is not easy to see, perhaps, but I think I can make it clear. The moment you pass your production beyond a certain point you throw your shop out of balance, and that lack of balance is the most costly thing to have about you. Let us suppose we are planning to make 30,000 instead of 10,000 tools and see what new factors come into increase the cost. In the first place, you have to have stock room for three times the amount of material. Carrying three times the amount of stock, there are all sorts of incidental costs that arise in that connection. There is the larger element of depreciation in the stock itself; there is the larger element of risk of a change in the market; there is the larger element of land required for storage, and there is the larger element of force required to handle the larger stock. There is also the larger element of building and so forth required to handle the larger stock, and there is the average larger element of interest required to carry the stock. And yet, in none of these factors, all of which are real and known to careful managers, has there been taken into consideration any thing but the raw stock itself. The moment you attempt to manufacture that stock into three times the quantity, you add other factors. Either you must increase your equipment or throw it out of balance. If you increase it, you add to your supervision charge or depreciation charge, and so forth. You must have larger space and more buildings. In every respect of cost, except the superficial elements of cost, visible to anybody who does not understand cost in its fundamental elements, the increase of your production from 10,000 to 30,000 is much more liable to make your goods cost you considerably more and involve you in real business risk than it is to go along on the minor quantity. I think that is well known to every careful factory manager. It is omitted very largely from our public discussions.

My own belief, then, as a practical factory man of over thirty years' experience is that the well-balanced plant—and I put great stress upon that question of balance in a plant—which operates on a sufficient output to keep it moving steadily is the most effective plant,—and that in that law you find the solution of the fact known to all of you that the small independent concern today has in almost every business grown up side by side with the great organizations which we fear so much, competing openly and successfully.

I think it may interest you to know that quite independent of factory life, and in another sphere wholly, a careful investigation that has just been made tends to show that in retail business it is not the great department store that distributes most cheaply, nor is it the small retail store, but a single unit of medium size confining itself to one or at most a few lines. I believe, gentlemen, that there is a law of maximum production at minimum cost, beyond which to press production means to increase cost; that that law has operated to the injury of many of the great industrial combinations and means, in my judgment, that they may not be, and in some cases have not been, founded upon a true economic basis. I know that it will be said that you need immense production in certain lines. That is true, and I do not say that the maximum point of production at lowest cost is the same in all lines or the same in one line at different periods, but there is a law which operates inexorably, beyond which you can not press the production without increasing the cost of every unit of that product, and that law itself will regulate—I do not say it is the only thing needed to regulate—but it will regulate, and has regulated, these great organizations to prevent their acquiring the dominant power which some fear.

I have spoken very frankly, but on the factory side only. I am not going to touch upon the alleged misdeeds of these combinations, because it would take some time, and I have not the knowledge of that subject, save as I gather it from public discussions, but I have come to believe that this law of maximum production at minimum cost is the fundamental industrial factor which is controlling. If the men in industry whom I know are well-informed—and I have talked with many of them—I do not know a single factory manager of rank and standing who would enter today of his own will into one of the great combinations that twenty or twenty-five years ago were so largely promoted among us.

Concentration of Industry in the United States of America

Speech of President Charles R. Van Hise, University of Wisconsin

IN opening a discussion upon the trusts, it will be well to ask the question regarding the extent to which there is general agreement concerning them. It is widely agreed, by those who have considered the question of big business, that monopoly should be prohibited. Also, there is an equally general conviction that unfair practices should be eliminated. Further, it is universally agreed that competition should be retained.

These premises I shall accept in this discussion without any attempt to prove their soundness.

However, many men who accept these premises believe that they carry implication for which there is not full warrant. In the first place, it is usually assumed that all of the so-called trusts are monopolies; indeed, if one runs through the discussions concerning the trusts during the past few years he will seldom find any discrimination between monopolies, trusts, and magnitude in business. The three are used as *synonymous* terms. The subtlety of this method of argument is evident. If it be assumed that any large business is a monopoly, it is easy to carry the conviction of the listeners that such organization should be destroyed. But magnitude and monopoly are not synonymous terms. Monopoly has a well defined meaning in law, and it is this meaning which should be assigned to the term in a discussion before the Chamber of Commerce of the United States of America.

President Van Hise on Concentration *(Continued)*

There may be great magnitude in business and not monopoly; indeed, it is believed, that by far the greater number of large organizations fall short of monopoly. Only if we assume that all of the great combinations of industry are monopolies, does the conclusion follow that they should be destroyed.

Not only do I hold that not all large business is monopolistic, but that concentration up to a certain point is necessary in order to give efficiency. It would not be held by anyone, I imagine, that we should return to the situation of fifty or sixty years ago, in which industry was minutely subdivided, in which there were few organizations of large size. Do any of you believe that we shall ever return from the great flour mill to the cross-roads grist mill? It is impossible because of the economic gains of magnitude.

There can be no difference of opinion that up to a certain magnitude there is a gain in efficiency because of this. But while we all agree that the nation will not return to the country grist mill, this does not settle the question regarding the magnitude that is permissible. Those who are attacking the combinations assert that a great many of the large industrial organizations have exceeded the magnitude which gives the highest efficiency. I may assert upon the other hand that very few of them have gone beyond the stage which gives increased efficiency. Neither side can prove his case because of lack of facts.

I have looked through the books and I have had experts examine the literature of concentration to find if investigations have been made that would give facts upon which to base a judgment regarding the relation of efficiency and magnitude. The only investigation of which I find record is that of Herbert Knox Smith concerning the steel industry. The former Commissioner of Corporations, as a result of an elaborate inquiry reached the conclusion that the large concentrations in the manufacture of steel are very much more efficient than the small ones, and for certain products he gave the amount per ton. He stated that the five great combinations, United States Steel, Lackawanna, Cambria, Jones-Laughlin, and Republic, have an advantage for pig iron and steel billets from $2.50 to over $5 per ton as compared with the smaller organizations.

Thus, for iron and steel it has been proved that a hundred million dollar combination is economically more efficient than a ten million dollar combination. It has not been proved that a thousand million dollar combination is more efficient than a hundred million dollar combination. No investigation has been made to determine this point. Some one may assert that the United States Steel Corporation is not more efficient than its four strong competitors; I may assert the contrary; and we are exactly where we were before, because we do not know the facts. The question is one for scientific investigation; and it is to be hoped that the Federal Bureau of Corporations will do the work. Similar investigations should be made for other lines of industry than steel, so that we may have a scientific foundation upon which to decide how far we shall permit magnitude.

If, as a result of investigation, it be shown that the larger number of organizations have not gone beyond the magnitude which gives increased efficiency in production, then that magnitude should be retained. However, it does not follow that a large organization which has been highly efficient in the manufacture of its goods has sold them at reasonable rates. It does not at all follow that the public has secured a fair share of the advantages which result from their increased efficiency. Thus it does not follow that the enormous profits of the United States Steel Corporation during the past dozen years, during which time they have been able to put back $500,000,000 into the business, have been justified. It does not follow that the colossal profits of the Standard Oil Company have been fairly distributed between those concerned in the production of oil and the public.

If, however, it be assumed that considerable magnitude is necessary to give efficiency, and the problem is one of division of profits, its solution must be along a different line from that, if the greater number of large organizations have surpassed the magnitude which gives efficiency. In the former case the organizations should not be destroyed; but methods should be devised by which the profits are fairly distributed.

We pass now to the second premise upon which we agree,—the prohibition of unfair practices. It is undoubtedly true that a factor in the attaining of monopoly by some organizations and great magnitude by others has been the employment of unfair practices, such as rebates, underselling to destroy competition, etc. This has led many to believe that in order to prevent unfair practices it is necessary to amend the Sherman Act, or to pass a supplementary act which shall prohibit as unreasonable every contract and combination in restraint of trade, however slight. This again is an assumption for which no one has given adequate proof.

In the third place, a free field for legitimate competition must be maintained. No steps should be taken which will endanger this great stimulus to industrial progress. However, it has often been inferred that retaining legitimate competition will prevent co-operation; whereas, the truth is cooperation in business may be just as advantageous to the general public as is cooperation in education, in social work, or any other line of human endeavor. Cooperation is the cry of humanity in this twentieth century, and commerce should not be eliminated from sharing its great benefits. In our desire to retain legitimate competition, we should take care not to outlaw legitimate cooperation.

THE LAWS RELATING TO CONCENTRATION

Before proceeding further in the discussion, it will be well to consider briefly the laws relating to concentration. Monopoly has never been recognized in this country by common law, nor by statute law; neither has it ever been so recognized in England. Cooperation in industry, both by combinations and by contracts, has been recognized by the laws of both countries. The distinction is fundamental. In England, in the Middle Ages, both common and statute laws were very stringent against combinations and contracts in restraint of trade. But Parliament, more than sixty years ago, wiped out all the statutes against such combinations and contracts, provided they were not monopolies, contrary to public policy, or immoral.

Also, in this country, in Colonial days, the laws were rigid concerning combinations and contracts in restraint of trade. But here also there was a gradual amelioration until cooperation was permitted along many lines, including division of territory, limitation of output, and even fixing of prices; provided, always, that as a result of the cooperation the combinations or contracts did not result in monopoly, or were not general, were not immoral, and were not contrary to public policy.

Thus we see that the laws in regard to combinations and contracts in restraint of trade went through a similar evolution, both in this country and in England, and that the laws finally became very liberal. In other countries than England and America, the laws relating to cooperation are also liberal. By gradual development the principle has been reached for most civilized nations that freedom in trade means freedom to combine as well as freedom to compete.

This was the situation in this country also, when in 1890 the Sherman law was enacted; and immediately the wheels, so far as cooperation was concerned, were turned back to the conditions of the Middle Ages. All combinations and contracts in restraint of trade were prohibited; and this applied to the latter even if limited in extent and confined in time. This national legislation led to an influenza of similar legislation in the states, and within a few years thirty states had passed statutes against combinations and contracts in restraint of trade, many of them even more drastic than the Sherman law.

The question now arises: What were the results of these statutes? The Sherman Act contained two separate provisions; one of which prohibited every contract and combination in the form of trust or otherwise in restraint of trade as illegal; another section provided that monopoly or attempt to monopolize was illegal.

By the public it was supposed that every contract and combination in restraint of trade meant what the words said, and that Congress in using these words meant to pass a new and drastic law replacing the common law; indeed the earlier decisions of the Supreme Court took this point of view and held that reasonableness or unreasonableness of a contract or combination was immaterial.

However, in the Standard Oil and Tobacco cases, the court took a new position; they stated that only restraint of trade which was undue was meant to be covered by the law (although the word "undue" is nowhere in the act); that the restraint meant that which was not permitted under the common law; and, therefore, that only contracts or combinations were prohibited by the law which were unreasonably in restraint of trade.

Why was this change of front made? Well, of course, I do not know; but it is a fair conclusion that the investigations of the Supreme Court led them to the view if the Sherman Act were enforced in exact compliance with its terms, this would create an impossible situation. Therefore, they inserted the words "undue" or "unreasonable" into the law, so as to make it accord with common law and thus started a second cycle of development by judicial decision. One cycle of evolution in regard to this matter has been sufficient in Germany, sufficient in England, and other countries. America is the only civilized nation which must go through this development twice; yet it is now proposed to neutralize the decisions of the court by denning "reasonable" so that it shall mean prohibition of contracts and combinations in restraint of trade of every kind, and thus succeed in getting the statute law back to where Senator Sherman and the people thought they had gotten it more than twenty years ago through the enactment by Congress of the Antitrust Act. This would compel the beginning of another third cycle of development.

THE EXTENT OF COMBINATION

In regard to the Sherman Act, it has been assumed that its only violators are the great combinations. This assumption is made in practically all discussions of the trusts. The Steel Trust, the Tobacco Trust, and a few other large combinations are mentioned; and it is assumed that the small business men and the small producers are not acting in violation of the law. But the principle of cooperation which the Sherman Act tries to suppress extends from the great industrial centers, like New York, Philadelphia, and Chicago, to the country cross-roads. Does it make any difference here in Washington whether one buys anthracite of one retail dealer or another? It doesn't make any difference at the country cross-roads either. The price is identical from all dealers in the same locality. The same is true of ice, the antithesis of anthracite; and it is also true of all standard articles. The principle of cooperation has extended from the great manufacturers and the great dealers of the large cities to the small manufacturers and small dealers of the small cities and even villages. All are co-operating in exactly the same way; the principle is the same for the large and small man; one is violating the law just as certainly as is the other.

I am willing to stand for enforcement of the law when the law is enforced alike for all; but when someone is picked out because he is in the front seat, or because it is good politics to attack him, and ninety-nine or nine hundred and ninety-nine are allowed to escape, I says it is a profoundly immoral situation. And that is exactly the existing situation in this country. He who says, "Break up the trusts; destroy them," says with the same breath, "We must have cooperation among the farmers." Why, gentlemen, the cranberry growers of Cape Cod, New Jersey, and Wisconsin sell about ninety per cent of

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their produce through an agency down in Hudson Street, New York. Similarly, many products of farmers, illustrated by cotton, citrus fruits, etc., are marketed through cooperative selling agencies.

Congress well understand this situation; and, at their two recent sessions, they attached to the paragraph containing an appropriation of $300,000 for the enforcement of the anti-trust laws a proviso that none of this money should be spent in prosecuting combinations or agreements of labor, nor spent "for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products." The purpose of this provision is clearly to make the Sherman law class legislation by indirection and in effect to prevent equality before the law of the manufacturer as compared with the farmer and the laborer.

Some of the smarter state legislatures also saw the situation as clearly as has Congress. In order to prevent the farmers from being hit by their anti-trust bills, they exempted from their scope the products of the land so long as held by the producers. This was true for Texas, Louisiana, Illinois, and South Dakota. You see the state legislatures, like Congress, appreciated that the farmeres have so many votes that they have to be dealt with gently when they form a trust.

But some of these laws got into the United States courts and these exemptions were promptly declared unconstitutional, as being special legislation and not giving equal protection under the laws. I venture to predict that it will not be so popular a political game to shout, "Bust the trusts," when the farmers understand that their trusts are also to be "busted."

No more immoral legislation was ever passed by Congress or by the states. Fortunately Ex-President Taft and President Wilson have both protested against this pernicious legislation. The principles of justice in regard to trusts and combinations are alike for the manufacturers, the farmers, and the laborers.

In this country we have not a special situation which concerns a few men, but a general irresistible impulse. It is all very well to ask, as some have done, "Has the time come when a few rich men shall defy the law?" But Edmund Burke said more than a century ago, "I do not know the method of drawing up an indictment against a whole people." There is just as close cooperation between the three icemen in the country town as there is in steel; and any solution of the problem of combination, if it be a just solution, must be applied not only to the corporations but to the small tradesmen and the farmer. Just as certainly as the great combinations are violating the Sherman Act, as I have no doubt many of them are, so are the small manufacturers and tradesmen violating state anti-trust statutes. This general violation of the trust laws, national and state, is the problem before us.

THE EFFECTS OF THE SHERMAN ACT

While the above is a true description of the existing situation the Sherman Act has clearly conferred some benefits. Thus the invocation of this act prevented the advance of freight rates by the railroads until the fairness of the proposal could be passed upon by the Interstate Commerce Commission. In a number of cases of corporations which have indulged in unfair practices, these practices have been forbidden, the companies fined, and in some cases the principals convicted under the criminal clause of the statute.

But undoubtedly the most important influence of the Sherman Act to the present time has been the acceleration of the process of concentration of industry,—the very opposite of what was intended. When the pool was found to be under the ban of the law, the trust was formed; when the trust was declared to be illegal, this led to the holding company. The holding company is now attacked, and this has rapidly accelerated complete merger. In other countries where cooperation of corporations is permitted and arrangements between them enforced, if they are not contrary to public policy, there has been no such rapid concentration of industry as in this country. A man who builds up a business is reluctant to surrender his autonomy. He has a pride in the house. If the situation becomes such that it is necessary or advantageous to cooperate with his neighbors, this he will do; but he will not surrender his independence. In consequence of this principle, the great combinations called cartels in Germany are much looser aggregations than the holding corporations of this country. They consist of a large number of cooperating organizations each largely independent rather than a great organization such as the United States Steel Corporation.

DISSOLUTION OF CORPORATIONS

Much satisfaction has been expressed by many in the dissolution of the Standard Oil Company, the American Tobacco Company, the American Telephone and Telegraph Company, the Union Pacific-Southern Pacific merger, and other organizations. But what advantage has the public derived from the disintegration of these corporations?

It may be that other companies engaged in the manufacture of oil, tobacco, etc., have been benefited by the change. In regard to this I do not know; but has the general public derived any advantage from the destruction of these corporations? The chief interest of the public, in whether kerosene or gasoline is manufactured by one company or by ten companies is the price paid for the product. Is the retail price of kerosene, tobacco, beef, or paper lower because there have been dissolutions of great organizations engaged in the manufacture of these articles? It is not possible in an address to discuss in detail the fluctuation of prices of the various articles concerned; but those of most importance to the people are meat and oil. For these the prices have risen instead of fallen since the disintegration of the Standard Oil Company and the beef trust. Indeed the price of meat has risen more rapidly than the average price of all commodities; and for the products of petroleum, if one combines kerosene, gasoline, and machinery oil, the prices have risen more rapidly than the average for manufactured articles.

Is the average price of the different brands of tobacco lower because of the disintegration of the American Tobacco Company? Do any of you get your favorite brand of cigars at a reduced rate? If not a stockholder, in what respect have you been benefited by the dissolution of the tobacco trust?

Wherein will the public be benefited by the dissolution of the Union Pacific and the Southern Pacific Railways? Are rates lower for passengers or freight than they were before the separation? And are they likely to become so? The only effect one can foresee so far as the public is concerned in the separation of these railroad companies is that there will be fewer through trains, greater expense in accounting, and less close cooperation between the two systems in handling the freight and passenger business of the public.

Wherein will the public be benefited by the voluntary separation, under the pressure of the Attorney General, of the Bell Telephone Company and the Western Union Telegraph Company? These two lines of business are closely analogous,—the carrying of messages partly by one and partly by the other is of advantage to millions of people. From the point of view of economy in doing the work of the two the closer the cooperation the better. At numerous places in the United States, one small room would furnish adequate quarters for the service of both the telephone and telegraph; indeed this is the situation in a number of European countries. In very small exchanges a single person on duty at one time could handle the necessary work of telephone central and an operator for the telegraph. But more important than these is the use of the same set of wires and poles for telephone and telegraph,—by far the most expensive part of the installations for both lines of business. At the same time wires are being used to telephone, they are also available to telegraph. For the trunk telephone lines, two wires may be used simultaneously for a telephone circuit and for four telegraph circuits. Thus a very large part of the telegraph business of the country could be done over the telephone wires. The advantages of the joint use of poles are obvious. Why then should the public be compelled to pay rates which will give fair returns on large sums of unnecessary capital required for the independent installation of telegraph systems, when by proper cooperation it would be possible within a few years to handle a very large part of the telegraph business of the country over the telephone system of wires.

Indeed the economies of joint operation of telephone and telegraph are so evident that if both were administered by the government in this country, as is the situation in various other countries, no one would for a moment think that they should be independent. In that case, it would be agreed by all that there should be as close interlocking as possible in the use of the necessary facilities and of the force.

Indeed the Postmaster General a fortnight since transmitted to Congress the report of a departmental committee, consisting of the First Assistant Postmaster General, the Chief Clerk of the department, and the Superintendent of the Division of Salaries and Allowances upon the proposal to make the telephone and the telegraph business a public monopoly. That committee recommended that the government acquire the telephone and telegraphs of the country in order that they might be operated as a unit in connection with the mails. This committee thus recognizes the numerous economies obtainable by the joint operation of the telephone and telegraph.

Why then should the Bell Telephone Company and the Western Union Telegraph Company cease to cooperate and thus become less efficient? Wherein will the public be benefited by the separation of the two companies? Have the rates been lowered by the telephone and telegraph companies, in consequence of the separation? Are they likely to be lowered in the future because of this separtion? It is to be remembered in this connection that it was after the alliance of the two companies that the lower rates involved in the night and day letters were introduced under the joint management. Further the work of the telephone and telegraph are public utilities and under the control of the interstate and state commerce commissions; therefore, if the increased economy which in the future would result from their cooperation, permits excessive earnings at existing rates, the commissions on behalf of the public should reduce the rates to reasonable amounts. Also if the rates charged at the present time by the telephone and telegraph companies are unreasonable, this matter should be investigated by the Interstate Commerce Commission and the companies ordered to put in force reasonable rates precisely as has been done with the express companies. This, clearly not separation, is the direction of progress for the operation of the telephone and telegraph, if the committee of the Post Office Department is sound in its recommendations that all telephone and telegraph companies of the country be acquired by the government.

In the above statements concerning the dissolution of public utilities, it is not meant to imply that all consolidated companies have been well managed. This assertion could be no more made than that the separate parts of the consolidated companies before their union were always well managed. But upon the whole there can scarcely be doubt that the great railroad systems, illustrated by the Pennsylvania, New York Central, the Baltimore and Ohio, the Northwestern, the Burlington, etc., everyone of which has been built up by the consolidation of independent companies, have been far more efficiently managed and to the greater satisfaction of the country than were the several small independent elements which composed each of them.

When glee is expressed at the disintegration of a great corporation, which is not a monopoly, we should have a satisfactory answer to the question. "Where does the public come in?" before we join in the mirth. If the public has gained nothing in price reduction for standard articles or for service by the destruction of the great corporations, would it not

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have been wiser to take steps to see that their profits were made reasonable, to see that the great advantages which come from their magnitude, efficiency and cooperation should be shared in large measure by the public?

THE FORCES PRODUCING COOPERATION

What are the forces which have produced combination and co-operation despite the laws, state and national?

The former Attorney General of the United States, Mr. Wickersham, said if we can only break up each of the great combinations into six, or eight, or ten parts, these different parts will compete; that the tendency to competition under such circumstances is irresistible. But I tell you, gentlemen, the tendency for cooperation in this twentieth century is so much stronger than the tendency for competition, that we shall never restore the latter in the old sense. There will be competition between different classes of goods; there will be competition between the great mail order house and the village grocer; there will be competition in service (and I am just as anxious as anyone to have trade regulated by competition as far as possible); but, as a matter of fact, competition has broken down hopelessly in this country adequately to control prices, adequately to control quality; and we all know it. Why, gentlemen, it is the theory regarding competition that it will regulate prices and quality, that it will give us reasonable prices and superior quality. That is a beautiful theory; but if this theory has ever corresponded to the facts in the past (and this I doubt), we may be sure that in the future it will never again do so.

We have recognized the failure of competition to secure quality by the establishment of the pure food laws. Why should we have pure food laws if competition will give us good quality? If articles were fraudulently sold so important to the general welfare as foods, there was a remedy in the courts. If I were sold a thing as pure strained honey, that was wholly innocent of having any relation whatever with honey, I had a remedy in law; I had been fraudulently dealt with. Why didn't I take my case to the courts? You know why. The loss was so small that it was impracticable for me as an individual to thus obtain redress.

The public, finally recognizing the fact that competition was wholly inadequate to secure pure food, national and state pure food laws were enacted and special officers were designated upon whom was imposed the duty of protecting the public. When we confessed that competition did not regulate quality, and imposed the duty of protecting the public upon administrative officers, we succeeded in getting pure food, or a reasonable proportion of pure food, at least, and never until then.

Now why is it that competition to regulate prices has broken down? Because of the simply enormous advantages which come from cooperation. One of these has been mentioned,—the economic gains of magnitude.

Other forces which have led to combination are the desire to eliminate or at least restrict competition, the desire to limit output and divide territory,—and in connection with these the maintenance of prices. These forces may be legitimate or illegitimate, depending upon the extent to which they are carried. Another force strongly influential in producing concentration has been the profit of promoters. Regarding the legitimacy of this force there may be great doubt in many cases. Limited time, while permitting the enumeration of these forces, prohibits their adequate discussion; therefore I shall pass on to the advantages which result from cooperation, and especially with relation to the natural resources.

THE ADVANTAGES OF COOPERATION

There can be no question that the competitive system, when unrestrained, is positively opposed to the policy of conservation. This is true alike for minerals and timber, but in an address only the briefest summary of the facts can be made.

The minerals of the earth, and here are included not only the metalic minerals but the carbon compounds, required the building of the earth for their making. Mineral deposits are doubtless in the process of manufacture at the present time; but even if so, this is at so slow a rate as to be negligible. From the point of view of mankind, the stores of minerals in the earth are deposits of definite magnitude upon which we may draw but once and which by no possibility can be increased. Take for instance the beds of coal. The situation in regard to them is similar to that of a man who has a deposit in the bank upon which he may draw, but cannot by any possibility increase by a single dollar. He is obliged to make his existing bank account last throughout his life. Similarly the banks of coal in the earth must last throughout the life of humanity.

In this connection it should be recognized that modern civilization would not be possible without the metals,—no iron ships, no metal agricultural implements, no tools, except those of stone, no fuel but wood, no railways, no instantaneous linking of all parts of the world together through the telephone and telegraph. Without the mineral resources we would at once return to the material conditions of the stone age.

It is therefore incontrovertible, from the point of view of the human race that economic systems or laws which result in unnecessarily rapid use of the mineral stores of the earth are indefensible. The wastefulness of the competitive system may be proved with regard to every product which is taken from the earth. In an address this cannot be done, but I shall mention without amplification two or three substances which illustrate the truth of this position.

In Wisconsin and Missouri lead and zinc are mined on a small scale under the competitive system in an extreme form. Here the losses in wasteful mining, imperfect concentration, and in smelting amount to from 45 to 50 per cent; in other words, only a little more than one-half of the metal in the deposits reaches the market.

In contrast with subdivision of holdings and the extreme competitive system for lead and zinc, is the situation for iron ore in the Lake Superior region. Here large holdings are the rule and with these come clean mining. The losses in mining are upon an average only about 10 per cent. Earlier in the history of this region, when the holdings were relatively small, the losses were from 35 to 40 per cent.

But the most important of the resources of the earth, so far as the future of the race is concerned, is coal Under the compelled competitive system losses are excessive. In the early days of mining not more than 30 or 40 per cent of the anthracite coal of the veins reached the market; making a waste of from 60 to 70 per cent; but in recent years with concentration of holdings, involving the introduction of adequate machinery, these losses have been greatly reduced.

At the present time, for bituminous coal the enforced competitive system in an extreme form exists. These mines could produce two hundred million tons more coal per year than the markets demand. Since under the Sherman Act the operators cannot cooperate in limiting output, dividing territory, or regulating prices, they handle their mines so as to meet the market conditions; this means the mining of the thicker veins in a wasteful fashion, and neglect of the thin veins in order to get coal to the market at the lowest possible cost. If the operators could agree upon limitation of output, and division of the market, so as to reduce freight, and could arrange for reasonable prices which would give them no more than their present profits, they would then exploit coal conservatively; for they themselves would be gainers in prolonging the life of their mines; and, far more important, many future generations would be the immeasurable gainers in that they would have an adequate coal supply.

For timber the same situation now exists as for bituminous coal. Extreme competition has been enforced through action against various lumber manufacturers and dealers' associations. In consequence of this the cutting of timber is now being carried on so that the wastes in operation are excessive; for only by getting the timber on the market at the lowest rates, regardless of waste, is it possible to handle the material so as to meet market conditions without loss. This is the lamentable situation created by law in regard to a resource which will last at the present rate of exploitation for scarcely more than fifty years.

Under the enforced competitive system, we are recklessly skimming the cream of the natural resources of a virgin continent with no concern for the rights of our children or our children's children. They will have a heavy score against us if we continue to ignore the future and compel the extreme competitive system in total disregard of their rights.

CORRECTIVE MEASURES

In the time that remains to me I shall proceed to the constructive side of the question before us and make positive proposals concerning the things which should be done in order that we may obtain the advantages of concentration of business and at the same time protect the public. My proposal, gentlemen, is neither regulated competition nor regulated monopoly (a favorite antithetical statement of many); but retention of competition, prohibition of monopoly, permission for cooperation, and regulation of the latter.

It has been proposed that combinations should be so divided that no one corporation shall have more than fifty per cent of any business. This is Mr. Bryan's suggestion. In the Stanley bill, the presumption of the violation of the Sherman law is against a corporation having more than thirty per cent.

Now, it makes no difference, gentlemen, whether the great combinations are so divided that no one has more than fifty per cent or thirty per cent of a line of business, or so that there are ten with ten per cent or twenty with five per cent. The demonstration of this lies in the fact already mentioned that thousands of farmers may and do cooperate in marketing their various products just as perfectly as do the five great manufacturers of steel. Since it is unquestionable that the sense of justice of the citizens of the United States will support the courts in prohibiting class legislation, we shall, I believe, ultimately permit cooperation in all lines of business.

If we, however, retain freedom of competition, permit concentration sufficient to give efficiency, allow reasonable cooperation, and prevent monopoly, this will require regulation just as it has been necessary to regulate the railroads. This done, the Sherman law will be forgotten. Has there been any prosecution of the railroads for violation of the Sherman law because of collusion in fixing rates? And yet everyone of us here knows that they are just as flagrant violators of the Sherman Act as any other class of corporations in the United States. Are the freight rates the same for different roads between any two points? Are the passenger rates between New York and Chicago identical on all roads? Can you do better in price by travelling over the Pennsylvania than over any other road? The rate is the same, providing the speed is the same.

How does it happen that the railroads all got together? Just by Providence, I suppose. It was doubtless by a Divine act that these rates were fixed identically upon every road, under the same conditions, all over the country.

Why is it that nobody proposes to indict the railroads for collusion? Simply for the reason that the rates which they can charge are controlled by commissions, national and state. Nobody any longer wishes to make them further trouble, because the public is protected by its commissions. That is the sum of the whole matter. The railroads are just as much amenable to attack under the Sherman Act as any other combination in the United States; but when the railroads are giving reasonable rates and are competing in giving reasonable service, even if the law is on the statute books,—the sense of official justice is such that they are not attacked in the courts. Will the Attorney General of the United States or the Attorney General of any state bring suit

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against the railroads for conspiracy in fixing identical rates, when the public is properly protected? I have not heard the proposal made anywhere.

However, it is a wrong condition when we have on the statute books a law of a kind which requires the officials of justice to close one eye whenever they pass by the men in control of one great group of industries, and at the same moment see other men not one whit more guilty. We ought to remedy this condition so that business men shall not be in the position, the unfortunate position, of being technically violators of statutes which it is not advantageous from the public point of view to enforce.

For a number of years it has appeared to me that the Interstate Commerce Commission, and the numerous state commissions having the control of public utilities, and the pure food commission clearly point the way for the next step in the solution of our industrial problems.

The most fundamental difference between the United States Steel Corporation, the Standard Oil Company, and other very large businesses and the public utilities, is that one class has been declared to be vested with a public interest and the other has not. Every business that is so large as to be vested with a public interest should be subject to control. Not only so, but wherever different companies or groups of companies cooperate so that they control the market for any article, their transactions become vested with a public interest. An interstate trade commission should be created for interstate commerce and state trade commissions for state commerce, each to have control over business which is vested with a public interest or in which the market is controlled, precisely as the public utilities commissions have control over the public utilities. It is to be noted that this propsal does not imply that the administrative commissions shall have control of all business, but only business which, because of magnitude, or because of cooperation, becomes vested with a public interest. The initiative in control of business will remain with the business organizations precisely the same as at present; but whenever an organization performs any act, which, in the opinion of the appropriate commission under the powers granted is contrary to the public interest, that body may intervene.

The powers of such a commission cannot be discussed in an address; but the bill introduced by Chairman Clayton of the House Judiciary Committee, to create an interstate trade commission and define its powers and duties, and supposed to be approved by President Wilson, is along the right lines. Possibly at the outset, this commission may not be given sufficient powers in all respects; but precisely as the Interstate Commerce Commission has had its powers increased from time to time, so the proposed Interstate Trade Commission could have its powers increased by Congress when experience shows this to be necessary.

However, to create a trade commission does not fully meet the existing situation. It is necessary that an act be passed to supplement the Sherman Act. As noted the Supreme Court has already declared that, so far as combinations are concerned, the Sherman Act permits reasonable restraint of trade; but the decisions of the court have not made clear the extent to which cooperation will be permitted as reasonable.

My proposal is that restraint of trade, either by combination or contract, and cooperation in limitation of output division of territory, or fixing of prices, be prohibited so far as they are inimical to the welfare of the public. Not only so, but it may be wise to make a presumption that actions of corporations along the above lines are inimical to the welfare of the public until approved by the commission. But when any act of cooperation has been approved by the appropriate commission it should be free from attack. By this simple expedient the situation becomes cleared. Cooperation for all classes of business would be allowed to continue, so far as it was not inimical to the public welfare.

Can there be any justification for going further than the proposal made, that for all classes of corporations all practices inimical to the public welfare be prohibited? For practices not inimical to the general welfare what possible reason can be given for their inhibition?

If the simple principle be adopted that cooperation not detrimental to the public interest is legitimate, in the proposed act supplemental to the Sherman law, the list of unfair practices and the nature of things which may become objectionable may be severe. The presumption may be made against the proposal of any organization to enter into any contract or combination in restraint of trade; and it can do so legally only if the proposal is found to be reasonable and not contrary to the welfare of the public by the commission having jurisdiction.

Cooperation of manufacturers may be inimical to the welfare of the people, or it may be beneficial. Where competition is pushed to the extreme, it is well known that the more powerful organizations may destroy the weaker ones. Also under conditions of extreme competition, there is frequently a strong economic pressure to reduce wages below reasonable amounts and to maintain improper conditions of sanitation and safety. However, where cooperation of the manufacturers is permitted to the extent that they are able to pay fair wages, have reasonable conditions of sanitation and safety, and pay a fair profit, the people as a whole are benefited by the cooperation; provided there is not unreasonable exactions from the public through excessive prices. But under the plan proposed the latter could be prevented by the Commission. Upon the other side the officials of a corporation would be able to ascertain from the Commission whether any proposed plan of cooperation was legal or illegal; and honorable men would be able to act in conformity with law.

The antitrust act as it now stands applies to the fruit growers' selling agencies of the farmers, as already proved by the Oregon case in which the Produce Exchange of Portland, Oregon, plead guilty under the law and was fined. While not speaking of this particular exchange, those who are familiar with the situation cannot doubt that the cooperative fruit growers' associations among farmers saved that industry, and have been an advantage to the public. A great move for cooperation among the farmers is now being actively pushed in many states. Upon another occasion I pointed out that it should be the aim of these cooperative exchanges to include both producer and consumer, to increase the share of the selling price which goes to the producer and decrease the selling price to the consumer.

Yet the development of cooperation among the farmers now every where proposed is contrary to the Sherman Act. If, however, the Sherman Act be supplemented so that only cooperation which is inimical to the welfare of the people be prohibited, then the legitimate cooperative enterprises among the farmers will be allowed instead of blocked as at present by the Sherman Act.

Also cooperation of labor organizations along legitimate lines would be lawful. Men engaged in industry would be able to act as a unit in securing fair wages and reasonable conditions of service. Labor organizations could only be interfered with when their cooperation took most business will be the most profitable; in order to secure some form which was unreasonable, that is, detrimental to the public interest.

COMPETITION TO BE RETAINED

Finally it should be appreciated that the proposal to permit cooperation will not lessen the incentive for the highest efficiency in production and in service. This is well illustrated by the conditions existing with the railroads at the present time. As has already been pointed out, all the railroads between Chicago and New York, for any given commodity under the same conditions, have the same rates However, there is the keenest competition among them to secure business Also there is effort at all times to increase the efficiency of their management. The reason is plain. The road which secures the most business will be the most profitable; in order to secure business a road must furnish the best of service: the company which secures the biggest share of the business and is most efficient will have the largest profits. That the condition described corresponds with the facts is evident when one thinks of the competitive contest between the New York Central and the Pennsylvania systems.

Precisely the same conditions will apply between cooperating industrial organizations when their profits do not go into a common reservoir, but are divided among their respective stockholders.

Therefore there will continue to be every incentive for lowering cost of production in order to get larger profits. If, at any time profits of the cooperating concerns become unreasonably large, then the trade commission may intervene to protect the public against excessive charges.

CONCLUSIONS.

The foregoing discussion leads to the following conclusions:

1. The Sherman Act has been useful in preventing unfair practices and punishing those who indulged in them; and its influence in this field is likely to become much greater in the future than in the past. Manifestly the act should not be modified so as to interfere with its efficiency in this respect.

2. The Sherman Act was useful as a club to prevent a general advance of freight rates, before the enactment of the clause which gave the Interstate Commerce Commission authority to suspend proposed advances pending investigation.

3. But the most important effect of the Sherman Act to the present time has been the acceleration of concentration of industry by driving organizations from the pool to the trust, from the trust to the holding corporation, and from holding corporation to complete merger, an effect the very opposite of that intended by those who favored the passage of the law.

4. No advantage has been shown, nor is likely to be shown from dissolution of public utility corporations under the Sherman Act, which are already under the control of the commissions, state and national. These are illustrated by the American Telephone and Telegraph Company, the Union Pacific-Southern Pacific merger, etc. On the contrary there is every likelihood that the public will suffer from dissolutions of organizations of this class. The above statement does not necessarily include lines of business of a non-public utilities nature which may be owned or controlled by a public service corporation.

5. To the present time it cannot be shown that any advantage has accrued to the public from the disintegration of such industrial organizations as the Standard Oil Company, the American Tobacco Company, etc. While the evidence is not wholly decisive, its weight is rather that the public has suffered from their dissolution through increased prices.

6. The foregoing conclusions, combined with other facts, lead to another direction than disintegration as the solution of the difficulties which have arisen in connection with concentration of industry; that solution lies along the following lines:

a. There should be created interstate and state trade commissions which should have powers in regard to those industrial organizations so large as to be affected with a public interest, and in regard to those which by corporation control the market, similar to those which the national and state public utilities commissions have in regard to the public utilities.

President Van Hise on Concentration *(Continued)*

b. The Sherman Act should be supplemented by another act, which shall forbid all combinations and contracts in restraint of trade which are detrimental to the welfare of the people and which shall make the presumption that all such combinations and contracts are thus detrimental; but permit the trade commissions to allow such reasonable contracts and combinations in restraint of trade as are not inimical to the welfare of the people.

7. This program to create interstate and state trade commissions and permit reasonable cooperation will result in the following benefits:

a. The efficiency which goes with industrial magnitude will be securable and the resultant profits may be fairly distributed between the producer and the consumer.

b. The farmers cooperative movements will become lawful.

c. Labor organizations will be free to act in all legitimate ways.

d. Exploitation of the natural resources may be carried on in harmony with the principles of conservation.

I echo the hope expressed by President Wilson that the time has now arrived when those interested in large business and the representatives of the people will consider the trust problem with mutual forbearance in an honest search for a just solution. If this be done in a spirit of "sweet reasonableness," it cannot be doubted that such a solution will be found. In a country, the rich resources of which vastly surpass those of any other, this cannot but result in general prosperity; and especially will this be true for those who belong to the lower financial ranks. I say *lower financial ranks;* for in the latter group are found the vast multitude of people which because of their number include the great majority of the highest ranks in the nation from the intellectual and moral points of view. I confidently look forward to a new era of social responsibility on the part of both the well-to-do and the poor, to a time when reason and science, rather than vested interest or passion, shall control economic legislation.

Evolution of Interpretation

Speech of Mr. Victor Morawetz of New York City

THE sentiments and the hopes expressed in the President's message on antitrust legislation have been received with general approval and sympathy throughout the United States. The great majority of the people agree with the President that the creation of private monopolies in the industries and in trade is intolerable and should be stopped. They agree also that the desired result should be attained without tearing up at the roots or unsettling legitimate business, without making sweeping or novel changes in the law and without impairing that freedom under the law which is essential to efficient and successful enterprise. All right minded people want the antagonism between government and business to end and all want the promised "peace that is honor and freedom and prosperity." It is certain that the business men of this country are ready and anxious to meet the government in hearty co-operation to attain these beneficent ends.

But the business men of the country have not the power to make the laws or to enforce them. That power rests wholly with Congress and with the Administration; and the power carries with it the responsibility for its exercise. Therefore, I read the admirable sentiments expressed in the President's message not only as an assurance and a promise to law-abiding business men, but also as a caution, as an exhortation, to the legislative branch of the government. The spirit of suspicion and antagonism which has affected some of our legislators as well as some of their constituents should cease. The great problem under consideration should be approached by Congress in a new spirit, in a spirit of thoughtful moderation, free from prejudice and sectional feeling.

There was occasion for such a caution. Some of the numerous trust bills introduced in Congress evidently were not conceived in the spirit of thoughtful moderation which the President recommends. Some of these bills, instead of furnishing safeguards to industry against the forces which have disturbed it, would place shackles upon legitimate business and enterprise. Such legislation would not make for progress in the right directon. The progress would be backward, not forward.

The wealth and prosperity of the country are due in great measure to the fact that men of ability and courage have had the freedom of action, as well as the opportunity, to initiate and to carry to success big enterprises—big business. To shackle business merely because it is big, or to penalize success merely because its rewards are large, would be a step backward, not forward. To hamper honest and legitimate enterprise merely to strike at those who break the law, or benefit themselves by illegitimate means, would not be enlightened and wise legislation. The country cannot prosper if all business must be conducted under a set of rules adapted only to a grocery store.

It is asserted that legislation supplemental to the present Antitrust Act is needed in order to render the Act more efficacious and to relieve honest business men from uncertainty and fear as to the meaning and effect of its prohibitions. Undoubtedly, some legislation supplementary to the Antitrust Act is desirable. The creation of a trade commission consisting of experienced and able men would be a wise step. It would be a step forward.

But, gentlemen, there is a good deal of misapprehension as to the ineffectiveness and uncertainty of the existing Antitrust Law. The cause of this misapprehension is to be found in certain early decisions and opinions announced by the Supreme Court of the United States, when the constitutionality and effect of the Antitrust Act were first considered by it. As you know, the Supreme Court is vested by the Constitution with the power and the duty to decide finally and authoritatively upon the constitutionality and the meaning of Acts of Congress. The pending legislation cannot be considered intelligently except in the light of the decisions and opinions of the Supreme Court under the existing Antitrust Act. It is appropriate, therefore, at the present time to review briefly some of these decisions and opinions. Such a review is appropriate for the further reason that it will show the injustice of the attacks which have been made upon the business men of this country who formed industrial combinations or trusts on the faith of a decision of the Supreme Court which since then has been reversed.

The Sherman Antitrust Act was passed in 1890. In January, 1895, the Supreme Court decided the case of the United States vs. E. C. Knight Company, commonly known as the Knight case. It was a suit brought by the government under the Antitrust Act to declare unlawful and to set aside the purchase by the American Sugar Refining Company of the control of four independent sugar refining companies located in Philadelphia by issuing shares of its own stock in exchange for the stock of these companies. The court found that "by the purchase of the stock of the four Philadelphia refineries, with shares of its own stock, the American Sugar Refining Company acquired nearly complete control of the manufacture of refined sugar within the United States" and that the several companies were in competition in selling their products throughout the United States. Nevertheless, the Supreme Court, eight of the nine judges concurring, held that the government could not maintain its suit. The grounds assigned by the court for this conclusion were, in substance (1), that "commerce succeeds to manufacture, and is not a part of it," that "the power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly," and that Congress had no power under the Constitution to prohibit the acquisition of the control of competing manufacturing companies, although the effect of such acquisition was to confer a monopoly of the manufacture of refined sugar, a necessity of life to the enjoyment of which, by a large part of the population of the United States, interstate commerce was indispensable, and (2) that Congress did not attempt by the Antitrust Act of 1890 to prohibit the acquisition of property under these circumstances. Referring to the Antitrust Act, the Supreme Court used the following language:

SUPREME COURT QUOTED

"Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted." (156 U. S. 16.)

In 1896 the Supreme Court decided the case of the United States against the Trans-Missouri Freight Association, and in 1898 the case of the United States against the Joint Traffic Association. In those cases the Supreme Court, four of the nine justices dissenting, held that a contract or combination among railroad companies for the purpose of establishing and maintaining interstate transportation rates was in violation of the Antitrust Act and unlawful. However, none of the justices criticized the decision in the Knight case or even suggested that its force was impaired or limited. On the contrary, that decision was referred to with apparent approval in the opinion of the majority of the court and was distinguished from the case under consideration. (166 U. S. 313, 326.)

In December, 1899, the Supreme Court decided the case of the Addyston Pipe and Steel Company. In that case the court held that an agreement among nearly all the manufacturers of iron pipe within thirty-six States and territories to apportion among the parties to the agreement the trade in iron pipe within a prescribed territory was in violation of the Antitrust Act and unlawful. However, again the decision in the Knight case was not overruled or criticized, but, on the contrary, it was quoted with approval and was distinguished. Referring to the Knight case, the court said:

"It was there held that although the American Sugar Refining Company, by means of the combination referred to, had obtained a practical monopoly of the business of manufacturing sugar, yet the act of Congress did not touch the case, because the combination only related to manufacture and not to commerce among the States or with foreign nations. * * * *

"The direct purpose of the combination in the *Knight case* was the control of the manufacture of sugar. There was no combination or agreement, in terms, regarding the future disposition of the manufactured article; nothing looking to a transaction in the nature of interstate commerce. The probable intention on the part of the manufacturer of the sugar to thereafter dispose of it by sending it to some market in another State, was held to be immaterial and not to alter the character of the combination. The various cases which had been decided in this court relating to the subject of interstate commerce, and to the difference between that and the manufacture of commodities, and also the police power of the States as affected by the commerce clause of the Constitution, were adverted to, and the case was decided upon the principle that a combination simply to control manufacture was not a violation of the act of Congress, because such a contract or combination did not directly control or affect interstate commerce, but that contracts for the sale and transportation to other States of specific articles were proper subjects for regulation because they did form part of such commerce.

"We think the case now before us involves contracts of the nature last above mentioned, not incidentally or collaterally, but as a direct and immediate result of the combination engaged in by the defendants." (175 U. S. 238, 240.)

Mr. Morawetz on Interpretation (*Continued*)

In March, 1904, the Supreme Court decided the case of the Northern Securities Company. The court held, four of the nine justices dissenting, that to vest in a holding company a majority of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company, two competing interstate carriers, was in violation of the Antitrust Act and unlawful. However, even in this case the decision in the Knight case was not expressly overruled, or even criticized. In the principal opinion it was referred to without disapproval and was distinguished from the case under consideration on the ground that the arrangement involved in the Knight case related only to the manufacture or production of sugar and did not directly relate to interstate or international commerce in sugar. In the dissenting opinion of Mr. Justice White, which was concurred in by three other dissenting justices, it was pointed out that the two cases were parallel, as in *each case one corporation acquired the stock of other and competing* corporations by exchange for its own. Referring to the Knight case, Mr. Justice White said:

"It was conceded, for the purposes of the case, that in doing so monopoly had been brought about in the refining of sugar, that the sugar to be produced was likely to become the subject of interstate commerce, and indeed that part of it would certainly become so. But the power of Congress was decided not to extend to the subject, because the ownership of the stock in the corporations was not itself commerce." (193 U. S. 381, 382.)

It will be seen, therefore, that during the period beginning with the decision in the Knight case in January, 1895, and extending at least until the decision in the case of the Northern Securities Company in March, 1904, the acquisition by an industrial corporation of the control of its competitors in business was sanctioned by an unreversed authoritative decision of the Supreme Court of the United States. During all this period every citizen was entitled to assume that the acquisition by an industrial corporation of property of its competitors in business, or the stocks of competing corporations, was lawful, though the result might be to monopolize trade or commerce in the products of the combined companies. During all this period it was the duty of every lawyer to advise his clients, in accordance with the decision of the Supreme Court, that such acquisition was not prohibited by the Antitrust Act of 1890.

It was during this period that many of the great industrial combinations were formed. During this period the Department of Justice of the United States, no doubt because it loyally accepted the decision of the Supreme Court, took no steps to prevent the formation of these combinations which since then have been attacked as in violation of the Antitrust Act. It is, therefore, not just to charge the business men who formed these combinations or trusts with a conscious violation of the law. They did only what the Supreme Court of the United States had decided to be lawful.

DECISION CAUSED UNCERTAINTY

Although the decision in the Knight case was not overruled or criticized by the Supreme Court in the case of the Northern Securities Company, the decision in the latter case gave rise to uncertainty whether, if the question were again presented, the Supreme Court would follow its prior decision in the Knight case and whether it would again hold that the Antitrust Act did not render unlawful the acquisition of control of competing manufacturing companies resulting in a practical monopoly of the manufacture of an article of interstate commerce. This uncertainty was not dispelled until May, 1911, when the Supreme Court decided the cases of the Standard Oil Company and of the American Tobacco Company. In these cases the Court practically, though not in terms, overruled its prior decision in the Knight case.

These cases were rightly decided and the prior decision in the Knight case was wrong. But it is unfortunate that the Supreme Court allowed its decision in the Knight case to stand unreversed and uncriticized for so long a time—sixteen years. During this time many industrial consolidations were effected and many investments were made in reliance upon the decision in the Knight case and, at least until the decision in the Northern Securities case in 1904, the bar of the country had to accept the decision in the Knight case as authoritative.

In these recent decisions the court declared that the statute rendered unlawful all contracts, combinations or purchases, in whatsoever form, operating as unreasonable or undue restraint of interstate trade or commerce. Although the reasoning of the court in these cases may not be wholly clear, the conclusion is indicated by the following language quoted from the opinion in the case of the American Tobacco Company:

"Although it was held in the *Standard Oil Case* that, giving to the statute a reasonable construction, the words "restraint of trade" did not embrace all those normal and usual contracts essential to individual freedom and the right to make which was necessary in order that the course of trade might be free, yet, as a result of the reasonable construction which was affixed to the statute, it was pointed out that the generic designation of the first and second sections of the law, when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that in view of the general language of the statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute." (221 U. S. 180, 181.)

In the opinion of the majority of the justices in the Trans-Missouri Freight Association case the view was expressed that the Antitrust Act rendered illegal every contract in restraint of trade and that the court could not read into the statute the word "unreasonable" so that it would apply only to such contracts as the court deemed unreasonable restraints of trade. However, the four dissenting judges disapproved of this view and held that the words "restraint of trade" in the Act embraced only contracts which, according to the law in force at the time of the passage of the Act, were deemed to be in restraint of trade, and that it did not apply to such reasonable agreements as were not deemed to be in restraint of trade. This difference of opinion among the judges, as well as the language used in later opinions of the court, gave rise to uncertainty and to fear that the Antitrust Act might be held to render unlawful many innocent and ordinary contracts and trade arrangements which were necessary to the successful conduct of trade. But this uncertainty was removed by the opinions announced in the cases of the Standard Oil Company and of the American Tobacco Company.

At the present day, therefore, it may be considered settled (1) that the Antitrust Act prohibits and renders unlawful every contract or combination in restraint of interstate or international commerce and all monopolizing or attempting to monopolize such commerce, whether by contracts, or by combining with competitors, or by purchasing the plants and businesses of competitors, or the stocks of competing companies, or by unfair and oppressive trade practices, or by any other means whatsoever; and (2) that the Act does not render unlawful reasonable acts and contracts in the normal course of trade which do not in fact restrain or monopolize trade, within the fair and reasonable meaning of those terms, though they may incidentally diminish competition in some degree.

Very little uncertainty remains as to the meaning and effect of the Antitrust Act of 1890; but it is true that uncertainty may arise whether the facts and circumstances of particular cases are such as to bring these cases within the prohibitions of the Act. Uncertainty and doubt of this character never can be avoided. It is rare that a statute or rule of law can be expressed in language so specific as to render its application to border-line cases free from uncertainty and doubt. There is scarcely a criminal or civil statute, or rule of the common law, the application of which to specific cases may not involve uncertainty and give rise to litigation. Even the Constitution contains many provisions that have been the source of endless uncertainty and doubt, as, for example, the constitutional provision giving to Congress power to regulate interstate and international commerce—the provision under which the Antitrust Act itself was passed. After more than a century of judicial decisions, the application of this constitutional provision to specific cases often presents grave questions and the precise scope of the provision probably never will be finally settled.

Under a complex civilization the lawfulness of acts often must be made to depend upon complex conditions and cannot be determined by simple rules that can be applied in a mechanical manner, or without the exercise of reason. As has been pointed out by the Supreme Court, questions of degree often are the controlling ones in giving effect to constitutional provisions and statutes. Similarly, in determining the lawfulness of acts of individuals it often is necessary to pass upon questions of degree, or of purpose, or to determine what under all the circumstances of a given case is reasonable. Thus, the courts may be called on to pass upon the reasonableness of railroad rates, having regard to a multitude of conditions, including the relative adjustment of rates between different localities. Such an inquiry would present practical difficulties at least as great as those presented by an inquiry whether the purpose or effect of a given transaction was to restrain or to monopolize trade, within the fair meaning of those terms.

PURPOSE OF ACT SETTLED

The Antitrust Act prohibits in the broadest language restraints of trade and monopolizing, and it is now settled that the purpose and policy of the Act cannot be avoided by any disguise or subterfuge. I doubt that any statute can be drawn that would really make the Antitrust Act more definite and certain, except, either by limiting the scope of the Act and defeating its purpose, or, else, by subjecting commerce to a set of cast-iron rules that would cripple it. Certainly, neither the so-called "Bill to Define the Sherman Law" nor the so-called "Trades Relations Bill," nor any of the other bills introduced in Congress would tend to make the law more definite and certain. Not one of these bills purports to limit the scope and effect of the existing broad prohibitions of the existing law and not one of them indicates a single act that hereafter shall be lawful. All these bills leave the existing Antitrust Act in full force, and simply impose additional prohibitions which would give rise to additional uncertainty and litigation.

The bill to define the Antitrust Act by including within its prohibitions certain definite offenses is especially subject to criticism on the ground that it defines nothing, that it clarifies nothing, and that it would create a cloud of uncertainty and doubt. The bill provides among other things that the prohibitions of the Antitrust Act shall include any company, combination, or agreement whose purpose is either "to create or carry out restrictions in trade," etc., or "to limit or reduce the production or increase the price of merchandise, or of any commodity," or "to prevent competition in manufacturing, making, transporting, selling, or purchasing of merchandise produced, or of any commodity," or "to make any arrangement or arrive at any understanding by which they, directly or indirectly, undertake to prevent a free and unrestricted competition," etc.

Mr. Morawetz on Interpretation *(Continued)*

No man can foretell what effect would be given to this language; but if it should be construed as extending the prohibitions of the present law so as to prohibit every agreement or "understanding" in any degree restricting trade, or limiting production, or increasing prices, or diminishing competition, without regard to the question whether its purpose, or effect, was really to restrain or to monopolize trade, the result would be to render it practically impossible to carry on a large part of the necessary business of the country under the ban of the law. The result would be either to cripple legitimate business, or to make it necessary to transact business in violation of the law in the hope that the Department of Justice would not enforce its penalties. There is an unfortunate tendency at the present day to enact wholesale prohibitions with heavy penalties, trusting to the good sense and discrimination of the Department of Justice and of the courts and juries not to enforce the law, except when its violation would cause serious injury to the public. Such legislation leads to contempt for the law and to lawlessness. Such legislation, in effect, substitutes government by executive will for government under laws and it is inconsistent with the fundamental principles of freedom.

POLICY IS SOUND

The policy of the Antitrust Law is sound. All contracts and all acts that really restrain the freedom of commerce, or that create monopolies in production or in trade, are contrary to the welfare of the community and should be prohibited. As mankind is constituted, the spur of competition is necessary to progress and to the development of enterprising and resourceful men. Industrial monopolies have not been the cause of our industrial progress; they have but reaped the fruits of progress that had been effected under competitive conditions.

However, it is not true that every contract or combination which in any degree lessens competition, or limits production, or increases prices restrains or tends to restrain trade or to monopolize it. On the contrary, some contracts and combinations of that character are necessary to secure economy and efficiency in production and in trade and to preserve strong and healthy competition at home and in foreign markets. If such contracts or combinations involve no elements of oppression of others, and if they do not put an end to healthy competition in any branch of trade or commerce, they should not be prohibited.

The Antitrust Act, as now construed by the Supreme Court, is a comprehensive and effective law. This is evidenced by the recent decisions of the courts and by the fact that the business men of the country have shown their readiness to obey the law without litigation whenever requested by the Department of Justice. It is true, however, that more effective machinery could be provided for ascertaining violations of the law, for obtaining prompt decisions as to its application to specific cases as they arise for enforcing the prohibitions of the law more promptly and more efficiently. To attain that result the creation of an interstate trade commission under an act carefully defining its functions, powers and duties would be a wise and effective measure However, the bill now pending in Congress for the creation of an interstate trade commission should be amended in various particulars. Thus the commission should be vested with certain additional functions and duties; the provision making public the information obtained by examination of the records, accounts, books and papers of corporations should be eliminated and all agents and examiners of the commission should be strictly prohibited from disclosing information obtained by them, except to the commission. The bill, however, furnishes the foundation for a measure admirably adapted to secure the prompt and efficient enforcement of the wise legislative policy embodied in the Antitrust Act.

Adequate Definition of Terms Absolutely Necessary

Speech of Frederick P. Fish, of Boston, former President American Telephone & Telegraph Co.

IN considering the Sherman Anti Trust Law, the principles upon which it was based and what may well be said to be the different principles which have been read into it and out of it since its enactment, and in discussing the wisdom and propriety of proposed legislation to supplement it in the effort to counteract supposed evils in our industrial organization and methods, certain things should be constantly borne in mind or our perspective may be wrong.

First, at every stage it should be remembered that the interest of the people as a whole should be alone considered. There should be no thought of attacking or promoting business enterprises, large or small, or their methods, generally or in specific cases, unless the interest of the community as distinguished from that of any individual or class of individuals, requires such action. No advantage should be conferred by the law upon capitalist or workman, upon producer or consumer, except for the benefit, economic, social or political, of the whole community. There should be no discrimination for or against large or small industrial organizations or prevailing business methods, except in so far as the same is demanded by a proper regard for the welfare of the ninety million people who live in our country. The problem of their well-being is complicated. It cannot be worked out without taking into account every phase of social and individual activity and all relations of men to each other and to affairs in a highly organized modern community; nor is there any room for favoritism or prejudice in dealing with it.

Under the conditions prevailing at present, it is obvious that commercial and industrial prosperity is essential. Legislation which impaired that general prosperity would be most unfortunate. The regular employment of our people, their earning capacity with adequate compensation for their effort, the opportunity of the individual for advancement and the necessary supply of products of proper quality and at a reasonable cost would all be jeopardized if our industries did not prosper.

Moreover, the time is coming when we must as never before compete with foreign countries in our manufactures or we shall have no position in the world's trade. We can not always hold our own merely by the development of our agricultural and other natural resources. If our industries are handicapped by unwise legislation, everybody will suffer. We should be extremely careful therefore not to destroy or weaken what is essential to our national prosperity because of too great consideration for the individual consumer or for any one else or because we do not altogether like some of the consequences following from the existence of methods of organization and business which have been enforced upon us by the times.

The whole question is one of compromise. We must deal with our industries in such a way as will best promote our prosperity even if some but surely not too great a sacrifice of current social ideals is involved.

Another thing which must not be forgotten is that present conditions about which there is so much complaint were brought about not by the capitalists or captains of industry, not by Rockefeller, Carnegie, Morgan, and men like them, but by a process of development growing out of the scientific discoveries, the inventions and the industrial enthusiasm that have been the marked characteristics of our time and from which came transportation facilities and vast opportunities for industrial activity, many of them necessarily on a large scale, which could not be worked out by small industrial units but which required not only courage and enterprise of a new kind but also the employment of aggregations of capital such as were inconceivable fifty years ago. The building of the transcontinental railroads, the establishment of international steamship lines and the working out of modern inventions on the scale required that the public might have the advantage of them, could never have been accomplished even by an infinite number of small financial and industrial units. The bringing together of large amounts of capital under single control, and under such conditions that great chances could be taken and definite and far-reaching policies carried out over a long period of time, was essential to achievement.

Moreover, no one can deny that the American people as a whole deliberately fostered and promoted the line of development which has resulted in present conditions. For they responded freely and willingly to the demands of the times, which as far as they could see could be met only by such organization and such methods as have been worked out, automatically as it were, during the last fifty years and which now prevail.

THE ENERGY OF DEVELOPMENT

It would have been impossible for the American people to have taken any different point of view. Fifty years ago we had a great, rich, undeveloped country with a relatively small population. At the close of the Civil War that spontaneous energy which so often in the history of the world has followed a great struggle which has touched the very heart of a nation, appeared among us in a most strenuous form. We were just at the beginning of a period of scientific discovery and of invention such as had never existed before, at least not in historic times. We demanded that our natural resources should be utilized in the production of food, timber, mineral wealth and other raw materials, that great systems of transportation should be established and that manufactures should be developed to the utmost.

The business organization and methods of the old days were entirely inadequate. No dozen of the richest men in the country could have built any one of the transcontinental railroads. No capitalist single handed or in conjunction with others with whom he would be able to associate himself could have worked out any one of the myriad industrial problems that were pressing for solution. If such great work was not to be indefinitely delayed, great aggregations of capital were essential. Therefore in every direction we, the people, encouraged just those movements which, logically developed, resulted in the conditions as to which there is now so much criticism. Among other things, the people individually and collectively co-operated to make possible and to assure such forms of corporate organization and such rights and powers on the part of corporations as would bring together under a single management, not in a few instances but in many, the vast sums of money that were necessary to meet the existing conditions of industrial expansion. Hardly a State in the Union did not between 1870 and 1900 modify its corporation laws, based as they had been upon the simpler conditions of fifty years ago, so as to make it possible for capital to be consolidated under a single control for the accomplishment of great undertakings. It was only by this process that the savings of the many could be utilized to secure the great results which the people demanded.

The same thing has gone on all over the world, but while the results for good and for evil have been substantially the same in Germany, France, England and other progressive nations, nowhere has there been the same reaction as in this country and nowhere is business so much embarrassed by legislation which interferes with its normal methods of operation. It may be that we are right in our attitude toward the business of today and that other nations are wrong. It may be that to insure the social and political well-being of our people, there must be as great a sacrifice of economic efficiency as some of us now demand. But we should carefully consider at every stage of our corrective legislation what is to be its effect on our industries, not overlooking the world competition upon which to so large an extent our

Mr. Fish on Definition (*Continued*)

national prosperity as well as the prosperity of each one of our individual citizens will surely depend.

Nor, in considering these questions, should the destructive character of modern competition be forgotten. In the old days when business was conducted on a small scale and each enterprise was, in its own locality, protected against competition from a distance by the expense and difficulty of transportation, it may well be that the maxim "Competition is the life of trade," was valid. The situation is very different today. With few concerns is local trade a matter relatively of much consequence. Every industrial organization primarily selects its location chiefly because of natural advantages such as proximity to the sources of supply of raw material, favorable conditions for transportation or a good labor market. From the point selected, it is able to compete everywhere.

Moreover, the well known principle in manufacturing that the greater the output, the less the cost per unit of output is rigidly applied and acted upon. Every manufacturer believes that if he could largely increase his product, he would so reduce his cost as to get the better of his competitors. But all of them simultaneously and continuously act upon this principle, with the result that all are inclined to seek a larger market to take care of the increased product which they desire. The easy and in many instances the only way to get this larger market is to cut prices.

For this and other reasons the competition of today is so destructive that there is always great danger of even intelligent and far sighted manufacturers being brought to the verge of bankruptcy by their own fixed inclination to expand and the pressure of their competitors to get away from them what business they have. This might not be the case if extreme wisdom and discretion could be expected *under existing conditions. But they cannot be expected.* The pressure is too great. Men are never superior to the spirit of the times.

I have no hestitation in expressing the opinion that this destructive competition which seems an inevitable incident of the normal business of the period would be, if unchecked, far more disastrous to our national and individual prosperity than any restraint of trade or monopoly that is possible under existing circumstances.

And it is not only the competition of the large producers with each other that may lead to disaster. In almost every industry there are many small concerns seeking to grow larger. Any one of these with an output of a few hundred thousand dollars per year may by aggressive competition fix an unreasonably low price on sales many times larger than its entire output and when many such competitors are at work, not only each of them but the large competitors as well may be in a hopeless situation as far as the maintenance of proper prices is concerned. If the principles of the Sherman law are valid some way must be found by which small concerns as well as large may be restrained from unfair competition or our whole industrial fabric may be shaken.

Another point of view from which it is clear that we should exercise the greatest care in dealing with the evils which the Sherman law undertakes to remedy is this:

PLAY FOR INDIVIDUALITY

Our modern business organization and business methods have developed automatically under the economic theory which so long prevailed, that in business there should be free play for individual intelligence, individual activity, individual initiative and individual effort. Every man was encouraged to build up as large an enterprise as he could, to get for himself as much trade as he could, and within the limits imposed by law and the principles of fair dealing, was entirely free to exercise his ingenuity, intelligence and business skill by advertising, by organization, by adopting improved methods of manufacture and of sale and in every other way, so as to get and to do as large a business as possible. Other things being equal, the greater his success, the more he was respected and the higher was the regard of the community for him. He who made two blades grow where one grew before was looked upon as a public benefactor. No one doubted that national prosperity and the prosperity of the people as a whole were promoted by securing and maintaining the utmost freedom of individual effort; but the Sherman law and all that has grown out of it illustrates an absolute reaction from this principle. Business men are no longer free, within the limits of honesty and fair dealing as generally understood, to work out their own salvation by strenuous enterprise and strenuous individual effort. They are hampered on every side by restrictions which a generation ago would have seemed inconceivably foolish and absolutely inconsistent with sound development.

Even if the new view is correct, we should be very careful that it is not carried so far as to suppress individual effort and paralyze progress more than the public interest requires.

Under conditions prevailing at the time the Sherman law was passed, each man was supposed to work out his own problems by his own intelligence and capacity. Great were the material achievements of the men who worked under those conditions. And again I remind you that the principles and methods which they adopted and in accordance with which they worked were not the result of the skill and intelligence of any individual or individuals. They were determined by the automatic action of underlying laws of human nature and of business which developed of themselves under the stress of difficult conditions and ardent effort so that they became instinctive with all men concerned with industry.

We must be very careful that for the sake of remedying alleged evils that have incidentally arisen, we do not carry too far a system of paternalism which may check aspiration and stifle individual activity by forbidding what have grown to be normal methods and imposing restrictions on individual effort which are inconsistent with the economic conditions of the time.

It seems certain that the capacity of the intelligent business men of today is greatly reduced by the feeling of helplessness that has come over them now that they find that many of the methods which they have adopted instinctively are forbidden by law or by public sentiment and that in some important particulars they can not do business in the way in which alone it seems possible for them to do it. If this process of discouragement goes too far, our national prosperity may suffer unduly, to the detriment of the entire community, the workman and consumer as well as the business man. The workman will suffer from low wages and from loss of employment and the consumer from the increased cost that is sure to come from discouraged and therefore inefficient business management. Individual enthusiasm will be checked and the hope of doing great things industrially impaired.

It is a very serious thing to suppress individual enthusiasm. To force men not to work on the lines which the times themselves have established as those upon which alone great work can be done must lead to this result. Such a policy should surely not be adopted unless the loss is sure to be more than made up by gain in some other direction.

If after the drastic experience of the last few years there still remain evils of monopoly and restraint of trade that are intolerable, *it seems clear that the effort should be made to correct those evils* without a greater destruction of the fabric of our industries than can be endured.

Will any one venture to say that adequate consideration is always given by all who talk on the subject or by our legislators to the extreme delicacy of the fabric of our industries, to the importance of promoting and saving what is good while attempting to cure the evils in them? It sometimes seems as if we saw nothing except the blemishes of the situation and were ready to imitate the man who burned down his house to get rid of the rats and cockroaches that were in it!

We are all to ready to be influenced by phrases. What is this "monopoly" and this "restraint of trade" which seem to be so abhorrent to the public sense?

Of course, in the old days of the Tudors and Stuarts, a monopoly was a hateful thing. It came only from a special grant, made by the King, which prevented all his subjects, except those upon whom the monopoly was conferred, from engaging in a certain line of business. Such "monopolies" were often granted as favors to Court favorites or were sold to raise money. Not a word could be said in justification of monopolies of this kind. They were absolutely contrary to law. The public got no benefit but only harm from them. But monopolies were sometimes granted for a substantial consideration received by the public as compensation for the grant. Such monopolies were "beneficent" and lawful. All the patent systems in the world were foreshadowed when the English Parliament in 1625, in an Act which absolutely forbade monopolies of the malignant type, specifically authorized monopolies for a limited term bestowed as a reward for invention or for bringing a new industry into the realm.

The monopolies of today, if any exist, are not at all of the kind which were so abhorrent to our ancestors. They have all grown out of the conditions of the times. In so far as men have participated in bringing them about, they were working on terms of exact equality with all the other citizens of the country in an effort to promote business enterprise. Any advantages which they had were only such as would have been open to any other men of similar character and capacity and similarly situated. They or their predecessors in business, by the exercise of intelligence and capacity, simply accomplished more than others who had equal opportunities. For reasons based upon our views as to the social and political well being of our people, we may not want monopolies in the sense in which that word is used in the Sherman Law, in which case we should work to suppress them to just that extent which the public interest requires, but we should not deceive ourselves by the pretense that there have been special opportunities for monopoly not open to all in accordance with the laws of the land, or by the failure to recognize that the very features of our social and business system which have aided in the establishment of great as distinguished from small enterprises were acceptable to and approved by the people as a whole as consistent with the requirements of the time and in accordance with the standards of public opinion.

WHERE MONOPOLIES EXIST

There are at the present time few instances, if any, of real monopolies in any sense of the word that are important in size or character. Some business enterprises are large but few, if any, have a monopoly.

To find today a monopoly, outside of those for individual inventions granted for a short period under Letters Patent as a reward to the inventor, one must look not among the large but among the small industries of the country where they are occasionally to be found. Sometimes they are based merely upon the small demand for a particular product and the skill and honesty with which a single manufacturer has been able to produce and market the same; but more frequently they are founded upon a trade-mark or other insignia of good will which has been brought home to the public so thoroughly that it will take goods of a certain character only when marked with that trade-mark or associated with those insignia.

Substituting for the sake of accuracy the phrase "large enterprises" for "monopoly," I fail to see how, from the point of view of the public interest, they can be harmful unless they result in an improper increase of price to the consumer, except possibly because of political or social considerations. Such considerations must never be overlooked, but we shall have nothing except intolerable confusion

Mr. Fish on Definition (*Continued*)

unless in determining our facts and settling upon our policies, we sharply separate the economic questions from all others. When we have mastered the economic side of the problem, and not until then, can we safely take into account social and political necessities and determine how far they should be allowed to modify our views and actions based upon sound economic considerations.

I do not believe that there is a single particle of evidence that prices to the consumer are now greater because of the existence of large business organizations than they would have been if all business had been carried on by small units. In fact, it seems to me that the evidence is all to the contrary. Moreover, much of our modern achievement would clearly have been impossible if business had been carried on only in a small way. Because there have been aggregations of capital large enough to deal comprehensively with great industrial problems work has been done and useful products developed and marketed to a far greater extent than would have been otherwise the case; and manufacturing methods only possible to organizations established on a large scale have surely resulted in a great reduction of the cost of production.

MASSED CAPITAL REQUISITE

I have one instance in mind of a machine which today is of the utmost value to the people of the United States upon the development of which was spent more than three million dollars before there was any return from the enterprise. If there had not been a corporation of the modern type with millions of capital and great resources by way of energy and trained men, which was ready to assume the burden and take the chances of working out the difficult problems involved in the perfection of this machine, it would never have been produced or put upon the market. Today, because of its efficiency and economy, it is of immeasurable value and will continue to be an asset to promote our prosperity to an astonishing degree until it is superseded by something better; and to produce its successor, if it ever has one, millions of preliminary expenditure and strenuous and well-directed effort will undoubtedly be required. For such work not only great resources, but stability and a certainty that after the expenditure there will be a free field and favorable conditions for doing the enormous business necessary to get back the preliminary cost with a reasonable profit, are surely essential.

There are many such instances and many others where it is certain that for one reason or another much useful work, which has been of great utility to our people, could never have been done except by enterprises far larger than any that existed fifty years ago.

The phrase "restraint of trade" is also one that undoubtedly inflames the public mind which approaches it with no definite idea as to its meaning.

What is the "restraint of trade" that is so objectionable at present? It is again only a natural development of the free and unrestricted competition of brains, capacity and resources which gives to those who have succeeded under the conditions imposed upon them by the facts of modern business an advantage over their less successful competitors. Trade is restrained in a true sense by every sale that is made and by every honest and praiseworthy effort that a business man makes to enlarge his business, for every sale made by one producer or distributor restrains the sale of the same goods by others, and every successful effort on the part of one, reduces the chances of others to do business in the same field. Certainly, all "restraint of trade" can not be objectionable. And if the thing itself is sometimes justifiable, why may not some kinds of agreements and understandings by which it is brought about be entirely consistent with the public interest? Of course, nothing can be said in favor of restraint of trade that is secured by harsh or wrongful methods; but are all methods which lead to that result to be condemned? Here again there may be political or social reasons for such a view; but should not the economic considerations be analyzed and determined independently of the others that the right compromise may be reached and that what is required for industrial prosperity may not be unduly sacrificed for other advantages however important they may be?

The restraint of trade that is now particularly complained of is in large part that which arises from the fixing of prices by agreement, the limitation of production that prices may be maintained without economic loss, and other like arrangements among competitors by which all may prosper under conditions where, if there were no such arrangements, many would fail utterly and none would succeed. So far, it seems clear that there is nothing immoral or unethical or wrong *per se* in such practices. If they are to be checked, it must be because they are economically disadvantageous or that considerations of political or social policy make it necessary to forbid them. Harsh, immoral or wrongful methods of getting at the result, that is, unfair trading or unfair competition, are a very different matter. Let such methods be controlled to the proper extent wherever they may be found. Their existence should not affect our attitude towards the underlying principles with which alone I am dealing.

It seems impossible to contend that if there are fifty competitors in a line of industry whose relations in competition are such that none of them can prosper and there is no hope of profit for any of them, there is anything morally wrong or should be anything legally wrong in their coming to an agreement or understanding that they will cease destructive competition and sell only at a reasonable profit. If one difficulty in their situation is that there is such over production that the aggregate output can be marketed only at a loss, which means that there is no legitimate demand for such an output, there is certainly nothing inherently vicious in an understanding that only so many goods shall be produced as can be sold at a price that will give a profit. Is it not too clear for argument that the interests of the workman, whose wages depend upon the profits of the industry, and the interest of the consumer, who is part of a community depending for its prosperity upon sound industrial conditions, are as much involved in the securing of a proper price and proper profit as are the interests of the manufacturer? Such understandings are common among men. The fees of lawyers, doctors and engineers, even the prices at which retail dealers sell the bulk of their goods and the market price of labor and of service generally are fixed by just such understandings. It is not regarded as legitimate to cut prices in any of these relations. Why should manufacturers alone be treated as wrong doers if they have similar understandings? They, like the others, may fix prices that are too high. If such a thing happens so often as to be a real hardship to the community, let us study the situation and find out how to remedy what needs to be remedied, without striking a blow at a most natural and ordinary practice to which men instinctively turn and which I respectfully submit may in many instances do far more good than harm. If we concede, as I think we should, that it is not wrong to try to check destructive competition, for the first time we shall be in a position to take up the question as to how to prevent proper efforts to secure reasonable returns in industry from resulting in excessive profits. Is it not worthy of careful consideration whether or not our present attitude of hostility to all agreements or understandings which result in any kind of restraint of trade is wise and sound?

It is more than probable that the fundamental reasons, which induced the public sentiment that led to the legislation now under consideration, were not the existence of large enterprises or of agreements to maintain prices and to steady production.

While it seems certain that there has been substantial progress, intellectual and social as well as material, in human affairs from the beginning, interrupted occasionally but on the whole continuous, every great change in social organization, or in the underlying theories upon which human relations have been based, has been attended by definite evils that grew out of the very process of advancement. There never has been a widely extended movement in religion or social reform that has not from the very nature of things, in view of the faults and weaknesses of mankind, been attended by such evils large and small. Revolutions in political ideas and in theories of government, while as a whole working for the good of mankind, have involved cruel and destructive features from which communities have suffered greatly.

In like manner, as the inevitable result of the wonderful and striking industrial and commercial development of the past fifty years, evils have come which were intolerable. It could not well be otherwise in view of the stress and strain of the situation, and the abnormal intellectual activity, excited by the conditions of the times, which necessarily attended such marvelous material expansion but which were calculated to overpower in a measure some of the finer sentiments and emotions the continuous influence of which are essential to society.

GOOD AND BAD POSSIBILITIES

Obviously, great industrial organizations had the opportunity to exercise great power in the community for good or for ill. Their wealth, the number of those associated together in them and of outsiders with whom they had close and intimate relations, the ability of the leaders, the loyalty of the subordinates, the capacity to help and to hurt individuals and other characteristics inherent in their very size, have given them a capacity for great power and influence outside of the field of their legitimate business. It was but natural that, having this power, large business enterprises, stimulated partly by selfishness and partly by pride in their work, exercised that power and, largely from inexperience and the shortsightedness that is common to us all, sometimes exercised it badly. There is no doubt that our great corporations have unwisely and to the detriment of the public interfered in politics, influenced legislation and dominated in the affairs of the community to an extent that was intolerable. The public naturally and rightly resented their attitude and this exercise of power, particularly as it was persuaded, rightly or wrongly, that in many cases corrupt and harsh methods were employed.

A revolt against such pernicious activity on the part of large business outside of its legitimate field was inevitable. The sooner it came, the better. It was only to be expected that when it came it should, to some extent, operate blindly and attack indiscriminately the good that should be fostered as well as the evil that should be destroyed.

Can anyone who is familiar with the situation doubt that today there has been a radical and far reaching change in the attitude and activities of large business enterprises? In all these matters relating to political, legislative and social control, they have surely learned their lesson. Today they are careful to the last degree. They are even cowardly for, to a most unfortunate extent, they lack the courage to present what they believe to be the truth, even as to purely economic questions in which they and the community have such a tremendous interest. Is it not fairly clear that this great evil has been to a large extent eliminated, leaving the field free for a sane discussion of business theories and industrial practices which ought now to be considered without prejudice and without partisanship with the view of determining what is required for the maintenance and enhancement of our national prosperity?

It is most unfortunate that the consideration of the questions of fundamental importance which are before this meeting should be embarrassed by the fact that our modern business development has gone through a stage in which evils of a temporary character were so strikingly apparent that even indiscriminate attacks upon all existing conditions seemed to be justified, in the belief that, at any sacrifice, what was bad must be eliminated.

Mr. Fish on Definition (*Continued*)

There is also no doubt that the views of the public expressed in and developed by the newspapers and magazines and reflected in legislation and judicial decisions have been unduly influenced by the mere accident that the conditions of tremendous activity and expansion which have prevailed made it possible for a few men to acquire enormous wealth, perhaps greater wealth than any man ought to be able to acquire.

While it is probably capable of demonstration that, as a whole, the men who have become extravagantly rich during the past fifty years have contributed to the public welfare at least in proportion to their wealth and that for every dollar which they have acquired the community has been benefited to an extent which was really adequate, it was but natural that such accumulation of capital in few hands should be resented, particularly because it came contemporaneously with and grew out of the reorganization of business and of business methods which after a time the public began to regard as so great a menace.

It is clear that the conditions under which such gigantic fortunes could be accumulated have passed, probably never to return. Can we not bring ourselves to ignore this consideration also and deal with our industrial and commercial problems without prejudice on this ground? It would surely be for the general advantage if we should recognize that the time has now come when we can consider our business methods and our business organization strictly from the standpoint of sound economic principles and without regard to accidental elements of a temporary character that have largely disappeared never to return.

When we are sure that we have a true appreciation of the economic situation and the economic needs, we shall then for the first time be in a position to work for national prosperity. Then and then only can we safely determine how far economic advantages may wisely be sacrificed for social or political ideals which, of course, must never be overlooked.

WHAT IS UNFAIR COMPETITION

I have spoken of "monopoly" and of "restraint of trade." There is another phrase which is constantly employed in this connection without much regard to definiteness of meaning. That phrase is "unfair competition."

These words are often used as referring only to harsh, unreasonable and brutal methods which large enterprises have been accused of adopting to harass and destroy, if possible, those that were smaller and weaker. That there have been instances of such oppression can not be denied; but neither can it be denied that here also there has been a great reform and that there is today much less ground for complaint on the part of the smaller enterprises as to their relations with those of greater magnitude than was the case a few years ago.

Great business enterprises feel as never before the force of public sentiment and they are now in a chastened frame of mind which leads them to respect the universal demand that they should not deal harshly or unreasonably in their competition with those who are less strong than they. They will surely stay in this frame of mind if they can become convinced that public sentiment will deal fairly with them in so far as the economic aspects of their affairs are concerned.

No one can question the wisdom of legislation that would suppress this phase of unfair competition provided it can be directed to the evils involved without intolerable destructive effects upon business generally. Here is a field for legitimate effort that has not by any means been exhausted although it is questionable how far legislation can wisely be relied upon to accomplish the much desired result.

But there are other forms of unfair competition inherent in the modern business situation to some of which I have already referred. Business concerns, small as well as large, from instinctive theories as to how best they may grow and prosper and particularly because each feels the necessity (which obviously does not exist) to get for itself as much of its competitors' business as possible, are ready to manufacture goods in larger quantities than the legitimate demands of the public require and to sell them at less than a reasonable profit. All this is in a true sense "unfair competition" of the most destructive character and in so far as it prevails, not only individual business enterprises but the interests of every consumer, every man who works for wages and of every citizen, are in jeopardy.

It is at least doubtful if any legislation can reach this form of unfair competition. The cure will come in time as a result of experience and education. Our modern industrial conditions are so new that it is surprising that we have been able to adjust ourselves to them as well as has been the case.

There are other forms of "unfair competition" now prevalent and it should not be forgotten that they are practiced by small concerns and individuals as well as by large enterprises. Some of them are clearly dishonest and can and should be checked by existing law. To deal adequately with others may require legislation. If such is proposed, it should be of a practicable character and should not aim at a perfection of methods or of society which it is impossible to attain. From no point of view should such legislation be mere attachments to the Sherman Anti Trust Law, for the unfair practices to which I am now referring do not grow out of "monopolies" or "agreements in restraint of trade," but out of the ordinary weaknesses of human nature.

I have spoken of the reforms in business and business methods that have come during the past few years in response to an insistent public demand. While the passage of the Sherman law and other drastic legislation was an effective means through which the public acted in bringing home to business men the necessity of revising their practices and making them conform to higher standards, I do not believe that the enforcement of these laws has played any appreciable part in bringing about salutary reform. A great change for the better has come because public sentiment demanded it and the circumstance that the Sherman law was enacted in response to that same public sentiment does not at all prove that, in and of itself, it has been or can be effective in the suppression of vicious and harmful activities.

But that law has clearly operated to interfere with the natural and normal development of industrial organization and industrial methods by undertaking arbitrarily to say that there should be no "monopoly" or "restraint of trade." Whether it was a natural product of the conditions of the times or purely arbitrary, whether beneficial or harmful, its enforcement has resulted in the disintegration of many large organizations and in the great embarrassment of many more. If the principles underlying it were logically applied, there is no limit to the transformation it could make in our business conditions or the extent to which it could force them to proceed on arbitrary and unnatural lines of development.

Even at this late day when we seem absolutely committed to the proposition that there shall be no approach to a monopoly in trade and that there shall be no "restraint of trade," except that which is "reasonable" according to standards which are and will continue to be so vague, uncertain and illogical as to be almost unintelligible, would it not be a good thing for us if we should analyze the facts and the situation scientifically and systematically so as to determine as a matter of knowledge and not of speculation what has actually been accomplished by the enforcement of the Sherman law in the direction of enhancing our national prosperity by building up business and reducing prices to the consumer or otherwise. It may be that it would be found that the law from the point of view of economic advantage was a mistake and that it did more harm than good, in that, in and of itself, it was not well calculated to correct the evils complained of, while it unduly impaired efficiency and the sound conduct of business in the public interest.

Such an investigation as this would throw a great light upon the validity of the supposed economic principles upon which the Sherman law was based and their applicability to present conditions when considered apart from political and social considerations. If such a study were made, we should then be in a position to give attention to the equally important matter of weighing at their true value the political and social needs of the day in so far as they are affected by the prevailing conduct of business. We should determine, first, whether the Sherman law is of economic value or the reverse; second, whether in view of all considerations, political and social as well as economic, it is well founded in principle; and, third, how it can best be amended in the public interest.

Instead of approaching the subject in this way, we seem to assume that there is something magical and even sacred about the Sherman law, that its underlying principles are among the eternal verities as to which doubt or criticism is blasphemy, and that if we are not happy in our business or in our industries, it is only because we have not gone far enough in condemning and preventing all approaches to "monopolies" (large enterprises) whether good or bad and all "restraint of trade" (cooperative endeavors to check uneconomic competition), whether destructive of sound business activity or well designed to check manifest evils in our industrial situation; because we have not to a greater extent broken up large enterprises already existing and made it impossible to establish new ones; because we have not sufficiently discouraged our industrial leaders and prevented them from working out their stupendous problems on natural lines.

Are we so sure of the validity of our underlying propositions that it would be a waste of time soberly and carefully to review them in the light of the experience of the last ten years before undertaking to develop them further by even more drastic legislation such as is expedient only if we are sure that these underlying principles do not require modification?

There is one other nation which has a law like the Sherman Act and that is the great continent of Australia, with its sparse population of a few million people, where so many social experiments of the most radical character are being tried out.

It is interesting to note that this law, which was drafted with our Sherman Act in mind, differs from it in some fundamental particulars.

By the terms of the Australian law, agreements or understandings in restraint of trade are unlawful only when made

"(*a*) with intent to restrain trade or commerce *to the detriment of the public;* or

(*b*) with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers and consumers."

In deciding whether or not such an agreement is in violation of the law, the conditions of competition, the rate of return on capital, the rate of wages for labor and the cost of the product to the consumer with all other relevant considerations must be taken into account with the view of determining the real bearing of the agreement and how it affects or would affect the public interests generally.

It may well be that it would be more wise and more just if our Sherman law forbade only those monopolies and those agreements and understandings in restraint of trade that were "to the detriment of the public," for then the entire situation with all its phases could be brought before the Courts, which would have the power, in each case presented, to do justice in view of the effect of the situation developed in that case upon the prosperity of the people as a whole, determined not on theory but upon an investigation and a correlation of all the facts.

Mr. Fish on Definition *(Continued)*

I can not help believing that when we have had a longer experience with our present industrial conditions and understand more clearly the necessities of the complex business situation of today, we shall modify the Sherman law at least to the extent of permitting the free natural growth of industrial enterprises and such agreements as to price maintenance and conditions of manufacture and sale as are reasonably necessary to secure a fair profit to producers, not of course in the interest of any class or grade of business or of business men but in that of the country and its citizens as a whole.

The Sherman law as originally drafted is now on the statute books and has been construed by the Courts in a few cases. The burning question of its amendment and of supplementary legislation is now before Congress. Practically, every bill that has been introduced aims at a more drastic suppression of so-called "monopoly" and agreements or understandings in "restraint of trade," and a more stringent control over normal activities of business and of business men. There is no evidence of any inclination to recede from the extreme position that the line of development of organization and business methods which came automatically with the most wonderful productive era in the history of the world was all wrong. In part at least that organization and those business methods surely came into existence because they were adapted to a new and difficult industrial situation. The situation remains and it is as difficult as ever; but the organization and methods are to be destroyed. What is to take their place? No one seems to give any thought to that question; but business men are asking it everywhere. Are they not entitled to an answer? Is it sufficient to say irrespective of any question of morals or fair dealing: "You are not to be allowed to develop large enterprises: you are not permitted to check destructive competition in the only way in which you know how to check it; but we, the people, acting through our legislators, give you no hope or comfort. Your experience and knowledge count for nothing. We believe that small organizations and cut throat competition is what the country needs."

Many of the measures now before Congress are among your topics for discussion today. I have been asked to speak as to some of them. You may think that I have failed in my duty in that I have spent so much time in generalization that I have none left for the special topics on your program. I do not altogether admit the validity of this view of the matter. I am satisfied that the great question of all as to this matter of business control by statute law is being persistently ignored. It is not whether this, that or the other device, embodied in a law, will make the Sherman Act more effective. It is not even whether the proposed amendments and additions are wise, whether they will do more good than harm. It is whether we are right in matters of underlying doctrine; whether the principles of the Sherman law as construed by the Courts are not too drastic; whether they are not likely to demoralize industry rather than improve its condition; whether they may not destroy rather than enhance national prosperity; whether they may not work to the disadvantage rather than to the advantage of the people as a whole. And I urge every member of this organization to give careful thought to this phase of the matter that he may determine for himself if my view is not sound.

TRADE COMMISSION FAVORED

I have only one specific constructive suggestion to make.

It may be that we are inclined to have too many Commissions to study and report on questions great and small. But wherever there is a complicated situation, involving many elements, some of them contradictory in character, and the matter is one that vitally concerns our national well-being, the value of a Commission, made up as it should be of the very best men in the country, is incalculably great. The Sherman Act has been on our statute books for over twenty years. Every effort has been made to enforce it during the past ten years. Experience is ample to make it possible for trained men, experts, to get at and correlate the facts and to draw conclusions from them as to every aspect of this great question. They could study the necessities of the existing business situation, the good that is in it, and its evils of today, not merely those of ten years ago. They could determine the economic necessities and the way in which they are to be met. They could take into account all ethical, social and political considerations. After thorough investigation, they could make a report as to how the Sherman law might be amended to advantage and what other legislation, if any, is required to put our industrial situation on a sound basis and to protect our business as well as our people against harm. They might conclude to adhere to the principles of the Sherman Act and make the law more drastic. They might conclude to the contrary. They might determine to strengthen it in some directions, as for example, against certain forms of unfair competition, but in some respects to modify it, that what is good in our recently developed business organization and business methods may be preserved. They would justify their recommendations by the presentation of facts and by arguments which would give business men, economists, legislators and all the people the opportunity to study the subject and to think and act intelligently instead of groping and guessing as we do now.

Such a Commission is of particular value where not only is the subject complicated and of transcendent importance but where, as in this case, there is about it an atmosphere of prejudice, partisanship and resentment which clouds the issues and makes sane judgment to a large extent impossible.

Without much systematic study and analysis, and I know of no way in which it can be made except by a competent Commission, it seems to me that no forward action by way of legislation is safe and that whatever we may do is likely to be done on wrong lines. And we must not forget that we can not afford to jeopardize our industries. Our whole future prosperity depends upon their sound development.

There are many provisions in the series of bills dealing with the control of the industries which have been introduced at this session of Congress, as is stated, with the approval of the Administration, to which I should like to call attention, if time permitted. Here are a few of them.

One bill proposes to establish an Interstate Trade Commission having the most inquisitorial powers of investigation into the affairs of business enterprises, large and small, which are entirely without precedent, with the duty of exposing to public observation and criticism every detail of their business. Their financial condition, the names of their customers, the amount and character of business done with each, their relations with all the world, friendly or otherwise, the errors and mistakes that they make, even if they may soon be corrected, the plans which they have outlined for the development of their business over a long period of time and their progress in working out those plans at one time or another, and all their other internal affairs, are to become matters of public record and the Commission is ordered to "make public such information in such form and to such extent as it may deem necessary."

DANGER OF GREAT POWERS

There is no limitation as to the subject matter that may be inquired into or the purposes of inquiry.

I do not believe that such broad powers should be conferred upon any bureau.

Business men of this country, before they give any support to this measure, should carefully study it that they may understand its scope and the consequences that would follow its adoption.

The utter incapacity of such a Commission to deal as required by the terms of the proposed law, with practically all business concerns of the country, seems obvious.

By the terms of another bill, it seems that a manufacturer would be a lawbreaker if he were able to secure an order from a large consumer for half the manufacturer's output during a period of months or years, and in consideration of the great advantage involved in the certainty of a stable customer and of a reduced cost of selling, were to give that contracting purchaser a five per cent. discount from his regular price to others.

The bill seems to prevent any agreement on the part of a retailer to handle exclusively the goods of one manufacturer.

The penalty for violation of the act both to corporations and individuals is very severe.

When we consider that such arrangements as are forbidden by this bill have always been common incidents of trade, that they are in no intelligible sense "in restaint of trade" or calculated to promote harmful monopoly, it would seem as if there was no justification for such legislation.

It is also so provided that it shall be unlawful for any one engaged in mining arbitrarily to refuse to sell to any would be purchaser. What is the sense or reason for such a provision? From any point of view are mine owners in the same category as public service corporations upon which alone is any such obligation imposed by law? The mining men must be able clearly to show many good reasons why they should be free to choose their customers. There seem to be vital objections to other provisions of this same bill to which I shall not take time to refer.

Another bill amends the Sherman law in such a way as to carry to the limit the extreme principle upon which it is popularly supposed to be based and which the courts have refused to apply, and to carry that principle so far as to include all concerns, large and small. It provides that it shall be a violation of that law for any two or more individuals or concerns engaged in interstate or foreign commerce

1. to create or carry out "restrictions in trade";
2. to limit or reduce the production or increase the price of any commodity;
3. to prevent competition in manufacturing, transporting, selling or purchasing any commodity;
4. to participate in any agreement, arrangement or understanding, directly or indirectly, to prevent free and unrestricted competition among themselves or any purchasers or consumers of any commodity.

As the law now stands, such transactions are not restraints of trade in violation of law unless there is an intention actual or implied to restrain trade resulting in such restraint as is unlawful. It is doubtful if such acts by small, weak concerns who do no substantial part of the business of the country, are prohibited by the present law.

By the terms of this act all qualifications are eliminated and any business concern large or small is a criminal if it does any of the things above recited irrespective of its intent or the success of its efforts.

Every business man, whatever be the size of his enterprise, should study this bill with the view of giving to Congress the benefit of his views as to the effect which it will have upon our national prosperity.

Another bill, based upon certain assumed evils that have arisen from the fact that some men are Directors in more than one corporation, goes a long way towards forbidding the service of any one man on the Boards of two companies.

The chief manufacturer of a small city or town is naturally a Director of the local bank or trust company, of the local public service corporations and of other local interests. He may be almost the only man in the community who is really competent for such service. Is there any real reason why this should not continue? In a large city the conditions are often such that a number of corporations need the services of a particularly able man which can be given without the slightest harm to any one, without the least effect upon monopoly or restraint of trade, and to the very great advantage of each of the corporations.

Mr. Fish on Definition (*Continued*)

There is no doubt that some individuals have served as Directors on too many corporations although it is by no means clear that there has been any substantial harm because of this condition. If this bill became a law, it seems certain that a greater evil than the one just referred to would result, namely, not enough men of the proper type for Directors could anywhere be found.

The large corporations would undoubtedly have the preference and the smaller ones might not be able to get any Directors who were at all fitted for the work. It is doubtful if even the large corporations could find enough men of the right type.

The question as to whether such legislation as is proposed on this subject is required should certainly receive most careful consideration from the people at large, who are quite competent to pass upon many phases of this particular matter after they have studied it, even if expert knowledge, not common in the community, is necessary to form a sound judgment on many other matters of proposed legislation relating to our industries.

I can not help thinking that if these bills, in their present form, were enacted into law, the conduct of our business would suffer irreparably, with disastrous results. But back of all these suggestions as to detailed legislation is the broad question of whether we are approaching the subject of the proper control and development of our industries in the right way. I believe that it would be greatly to our advantage if that underlying question could be studied and we could be sure that it was settled on a sound basis before we advance further into the regions of the unknown by adopting speculative suggestions based on unproved and at least doubtful theories rather than on the facts and necessities of our business situation.

Proposed Trust Legislation

Speech of Henry R. Towne, President of the Yale & Towne Manufacturing Company, of Stamford, Conn., and New York City, N. Y., Former President of the American Society of Mechanical Engineers, and the Merchants' Association of New York.

THERE is now pending in Congress a series of Bills which vitally concern all business interests, some of them, the so-called "Anti-trust Bills," being understood to be endorsed by the Administration.

In a free country all laws reflect the usage and the morals of the people; usage precedes and creates laws. Legislators are able to deal intelligently with general laws because familiar with their purpose and qualified by experience to judge of their effects, especially as to laws relating to the general welfare of the community. This is not equally true, however, as to laws designed to regulate the conduct of business, because not many legislators are trained and experienced in business management and affairs. Therefore there is special need, in the framing of such laws, that the legislator, before reaching final conclusions, should seek the aid and advice of men of experience in business affairs.

I believe that business men generally are ready to respond to the call thus implied, and that if they appear to hold back at present it is because they have had so little time in which to study the proposed Bills and their probable effect on business, and partly perhaps because the events of last summer seem to suggest that business men would not be welcomed in the Capitol and could not feel assured of courteous and fair treatment. The invitations recently extended by the Committees having charge of the Bills under discussion, for business men to attend their hearings, imply a different and cordial attitude, and I believe that they will be largely accepted if further time and opportunity can be afforded. I know that business men everywhere are keenly interested in these matters, and are watching their outcome with great interest, and I believe that most of them would be glad to aid in reaching sound and sane conclusions, according to their ability.

The Bills which properly may be grouped together for the purposes of this discussion are the following, viz:

"THE FIVE BROTHERS" OF THE ADMINISTRATION

1. The Interstate Trade Commission Bill.
2. The Interlocking Directorates Bill.
3. The Sherman Law Definitions Bill.
4. The Trade Relations Bill.
5. The Railroad Securities Issue Bill (not yet drafted).

RELATED ISSUES

6. A Bill for the investigation of "Combinations." (Similar in character to the "Canadian Combines Investigation Act").
7. A Bill to legalize and regulate Re-sale Prices.

COMPLEMENTARY ISSUE

8. A bill to create a permanent Tariff Research Body.

Each and all of these proposed new laws would directly and profoundly affect Business; collectively they would influence it to a vital degree. The people, at the last National Election, decreed that legislation of this general kind should be enacted. Business men as a class are not opposed to it. What both really desire is that these laws shall be fair and just, both to the people and to business, and that they shall be enacted as quickly as possible. To accomplish this requires co-operation. The business man as a party in interest, is not competent alone to draft such laws; but neither is the average lawyer or legislator competent to deal with matters so complex and so technical without the aid of the expert. Working together and in harmony they can frame laws which will accomplish fairly what is sought.

It is the true desire and purpose of the nation, I believe, and should be the aim of these new laws,—

To restrict and regulate *big* Business so as to eliminate privilege and monopoly, but

Not to hamper and weaken *small* Business in any of its legitimate activities.

As to *both* the aim should be to promote efficiency and proper co-operation, especially as to our export trade, the volume of which, and the excess of exports over imports, have both nearly doubled during the last decade. All the people are concerned in promoting our export trade, and in strengthening American Manufacturers and Merchants against foreign competition in the neutral markets of the world. Especially is it desirable that the smaller units of industry should survive and grow, in order that their benefits, to producers and consumers alike, may be preserved and extended. To this end the law should permit and encourage co-operation among them which will promote efficiency and lower costs, while equally forbidding artificial monopoly or privilege, and excessive prices and profits.

Turning now to the proposed Bills, let us consider them in detail.

No. 1. Interstate Trade Commission. A new tribunal of this kind is unquestionably desirable, and its ultimate usefulness should equal that of the Interstate Commerce Commission. Business needs it and, if it is properly constituted will welcome it. It would be a "Clearing House" for the solution of a vast number of the doubts and perplexities which now confront Business. It should serve as the "Court of First Instance" for most matters arising under all of the proposed "Bills," and also to promote *uniform practice* in all sections of the country, and *despatch* in dealing with all minor cases. Delay and uncertainty are heavy handicaps on Business, and this new tribunal should greatly lighten them. Therefore it should be given wide jurisdiction and broad powers. I believe that most of the matters to which the so-called Administration Bills relate could wisely be consolidated under a single law, the administration of which could be vested primarily and chiefly in the proposed new Commission.

I urge, however, that the Commission should *not* be authorized to make public the private affairs of corporations, except by order of a Federal Court, or of the President of the United States, for the sole purpose of aiding Congress in future legislation; nor do I believe that the Commission should investigate one corporation at the request of another except for due cause shown.

No. 2. Interlocking Directorates. Some of these are unqualifiedly bad; some are harmless; some are useful and entirely proper. The proposed Bill condemns them all, without discrimination. It is good in purpose but bad in form. If intelligently and fairly revised, I believe it will command general approval. As drawn, it would work hardship in many cases, would impair corporate efficiency, and would forbid many acts heretofore legal, customary and beneficial, which tend to injure none, and to benefit many. A subsidiary corporation may be not merely useful but essential in the conduct of business in foreign countries, or even in different States of the Union and its directorate, for obvious reasons, usually "interlocks" with that of the parent Company. In like manner "a holding Company" may be not merely harmless, but useful to the community; as for example in promoting the development of public utilities in localities unable to finance them otherwise. In brief, this bill while crude, objectionable, and even destructive in its present form, can and should be so recast as to eliminate certain existing evils without injury or prejudice to any legitimate interest. Any such bill, however well formed, will require interpretation in a vast number of cases, and I suggest that the proposed Interstate Trade Commission may well be made the Court of First Instance as to these matters.

No. 3. Sherman Law Definitions. This Bill purports to clarify the Sherman Law, but in fact it merely substitutes for the broad prohibition of the latter (the scope of which is rapidly being defined by Court decisions), four specific varieties of forbidden acts, thus launching business on another sea of inexperience which can only be charted and understood by a new series of Court decisions to determine the meaning and scope of these new "definitions," which do not define any better than those already made by the Courts, if as well. Except as to Sec. 4, making individual officers and directors liable for the acts of a corporation, this bill appears to be unnecessary even if not tending to complicate rather than to clarify the existing situation. It is to be hoped that it will be withdrawn, unless radically modified.

No. 4. Trade Relations. This Bill, like No. 3, aims to revise the Sherman Law by defining other kinds of "monopoly." It also suspends the statutes of limitations in certain cases under the Sherman Law, thus prolonging the period of uncertainty under the latter which is one of the heaviest burdens on Business, especially when the action investigated was done in good faith, with intent to respect the law. As drawn, I regard this Bill as unfair and bad because,

(a) It denies the natural right of a seller to grade his prices to customers of varying classes, credits, and value to him.

Mr. Towne on Trust Legislation (*Continued*)

(b) It deprives the seller of protection against a disloyal agent.

(c) It would compel a seller to sell to an unwelcome and undesired customer.

(d) It discriminates against one industry, namely, mining.

In brief, this Bill would operate in restraint of freedom of trade in many oppressive and unnecessary ways. I believe that its purposes, so far as good could better be effected under the administration of the proposed Interstate Trade Commission.

No. 5. Railroad Securities Issue Bill. As this has not yet been drafted and presented, it is not yet before us, and therefore cannot be discussed.

No. 6. Investigations. If well framed, a law similar to the Canadian "Combines Investigation" Act would be of immense benefit especially to the vast number of *minor industries*, the aggregate of which, both in volume of business and in number of persons engaged, far exceeds the aggregate of the so-called "trusts" or great corporations. Its aim should be not merely to permit, but to *encourage*, co-operation between small competitors in order,

(a) To enable the latter to resist the encroachments of their larger and more powerful competitors, and to survive.

(b) To check monopoly by promoting the welfare of the smaller units of industry.

(c) Especially, to strengthen American manufacturers and merchants in their ability successfully to compete with those of other countries in the neutral markets of the world.

The great merit and value of the Canadian Act consist in its two fundamental features, viz:

1. That actions which are on the border between what is permissible and what is not permissible, under either the common law or statutory laws, may be continued unless and until they are formally objected to by legal notice, and,

2. That if objected to, and if the objection is sustained by the appointed tribunal, there is no *retroactive* punishment, the penalties of the law only applying in case the actions in questions are continued *thereafter*.

Such a law, if adopted by us, would at once tend to clarify the whole situation as to a vast number of cases and issues which at present are involved in doubt and would speedily build up a body of precedent, based on actual facts and conditions, which would within a few years determine conclusively the true intent of the law governing these matters as thus interpreted, and enable all concerned to regulate their doings in accordance therewith.

If such a law is enacted I suggest that the services of the Interstate Trade Commission should be utilized in giving effect to some of its provisions.

No. 7. Re-sale Prices. The regulation of Re-sale Prices is an issue which vitally affects the buyer and seller in every field. The arguments for and against permitting the seller to control re-sale prices are closely balanced, but a middle course should be sought, whereby, while the buyer is protected against extortion and monopoly, he is also protected in the benefit to himself of ability to purchase the article he wants, under its advertised name or trademark, and at the price established and advertised by the maker, with assurance that he is buying as favorably as anyone else.

A law which will accomplish the results thus implied will greatly benefit many important industries, especially those which aim at high and fixed standard of quality in their products, and also a vast number of consumers. Its chief effect would be to promote the improvement of quality in production and to maintain a high standard of trade morality.

To sum up. Now legislation is needed, not to amend the Sherman Law, but rather to provide the method and means, the *mechanism*, for applying it effectively, promptly and easily, in harmony with the decisions of the Courts to business as now conducted in all its phases. This will give rest, and rest and relief from uncertainty is what business chiefly needs.

An Interstate Trade Commission will furnish the needed mechanism; and most, if not all, of the *good* features of the four bills (Nos. 1 to 4 above) may well be incorporated in No. 1, while the *bad* features should be abandoned, thus giving to that commission the function of a Court of First Instance as to most of the cases arising under the Sherman Law, and furnishing business with a tribunal of information and advice to guide it in its effort to obey the law.

The Tariff and Currency questions are disposed of. The creation of an Interstate Trade Commission, and the enactment of a clear and simple law defining its powers and duties will complete the Triad by disposing also of the Anti-Trust problem, so far as present legislation can wisely attempt to do so, and thus, by destroying past doubts and uncertainties, set the wheels of industry and commerce in motion, moving forward again on the highway of peace towards the goal of prosperity. Business asks nothing more:—it will be content with nothing less.

True, this implies further work in drafting the new laws, but with co-operation between the representatives of Business, sincerely desirous that such laws shall fairly give effect to the will of the people, and the representatives of the people, in Congress assembled, sincerely desirous that such laws shall fairly conserve the just rights and interests of Business there will soon be written into the Statutes new measures which will accomplish all that is thus implied.

Proposed Bills Analyzed

Speech of Guy E. Tripp, Chairman of Board of Directors, Westinghouse Electric and Manufacturing Company.

I AM very glad to have this opportunity of expressing my views upon the business questions now before Congress, and, while they are the views of one who has given his entire life to business, I hope that I still retain the ability to see also the human and social side of these questions. For I have an uneasy feeling that the neglect of this side explains many of the difficulties we have in understanding the temper of the people.

Whether it is economically sound or not, the public has the belief that practically all business should be roughly divided into two classes, the one comprising the natural monopolies of public necessities, in other words, Public Utilities, the other comprising the naturally competitive private business undertakings. Personally, I find no fault with such a division, but manifestly these two distinct classes require different legislative treatments.

That Public Utilities should be regulated and not given the free hand that naturally competitive business requires, is sound doctrine, but only when such regulation carries with it an obligation to protect such Utilities against the menaces which confront competitive business. If we restrict opportunities, we must reduce the risks.

Almost nothing has remained unthought of in the way of regulation and restriction, and the cheerfulness with which regulatory burdens have been heaped upon our Public Utilities is discouraging, when it is remembered that hardly a single voluntary act for protection has been heard of.

Public Utilities should be protected against competition, inadequate rates, demands for excessive service, unreasonable and unjust damage claims, Federal regulations superimposed upon State regulations, and most important of all against oppressive demands of labor. Under present conditions, the mere threat of a labor strike on a Railroad is sufficient to almost automatically produce an increase in wages, or cause railway managers to relinquish their right to enforce discipline in the interest of the safety of the public and economy of operation, as instanced by the recent strike on the Delaware & Hudson Railway. The best evidence that our legislators have abandoned their campaign of punishment and have become sincerely desirous of doing the fair thing by our Public Utilities will be shown when someone has the courage to introduce a bill intended to effectually prohibit strikes and lockouts on Railroads.

The various Railroad Securities bills which have been proposed almost wholly ignore the investigations of the Hadley Securities Commission which recommended first of all that publicity be required and pointed out objections to any further regulation of securities until publicity had shown what might be needed. However, we already have State supervision of Railroad Securities quite generally, and I believe that Federal supervision would be found an improvement provided it supersedes that of the States. I have not heard it suggested, however, that the State's right in this respect could or would be taken from them, therefore superimposed regulation may be imminent and such a condition is justly to be feared by the Railroads.

While, therefore, Railroads and other Public Utilities need special legislation for both regulation and protection, a naturally competitive business (like that in which I am engaged) stands on an entirely different basis and, if competitive conditions are maintained for it as I believe they should be, neither regulation nor protection of the character just mentioned has any place in its dealings with the government.

If one can not manufacture his goods and sell them as cheaply as his competitor can, he must eventually fail; and, if his employees force him to the issue, he can shut up his shop and both he and his employees will be out of income for a longer or shorter period, but the general public welfare is not vitally affected.

A great deal of the proposed legislation at Washington is directed toward creating or maintaining conditions which, in the mind of the legislators, will tend to insure competition among this class of industries which, as I have said, are to be distinguished from public utilities. In so far as these measures will be effective in the direction of securing sane competition, I believe they are wise.

Monopoly is not in itself objectionable: in fact, it is often the most effective way of dealing with industrial affairs. In Germany it is fostered and protected by the government to a large extent with the result that the commercial supremacy of that country in the markets of the world has been established within a comparatively few years of the most rapid business growth perhaps that has ever been seen.

But I believe that our political institutions and the temper of our people are not adapted to monopolistic methods that are in restraint of trade, and that fair competition in business will make a more contented public, a more secure government, and in the end give greater protection to property.

Therefore, I am in favor of all fair and reasonable legislation sustaining that theory.

Fair or sane competition is hard to define.

To my mind free competition is not sane competition.

The biggest business in the country was founded almost entirely upon the principal of free competition, namely that of making prices what and when you will and taking all the business from your competitor that you can. If this business was a monopoly, it grew to be so without the aid of interlocking directorates or the alleged money trust; it became a monopoly simply by the practices of free competition.

Mr. Tripp's Analysis (*Continued*)

Therefore, in considering the various business measures now pending, particular attention should be given to the question—Will they, or will they not, assist in securing sane competition, not free competition?

The five bills now proposed are, viz:

An Interstate Trade Commission Bill,
An Interlocking Directorates Bill,
A Sherman Law Definition Bill,
A Trade Relations Bill,
An Anti Holding Company Bill.

It is not my purpose to attempt a detailed discussion of these measures for in the details lie endless differences of opinion, many real and imaginary dangers, and much sincere and insincere befogging of the issues. I believe that the safest viewpoints for the busy citizen are

First, Are they based upon the right principles?

Second, Is it probable that acts can be framed which will sustain these principles without doing more harm than good?

TRADE COMMISSION BILL

A Trade Commission seems to me to be needed in a well rounded plan of business legislation.

No other agency can so well collect information, conduct investigations and determine facts for the guidance of the legislature and courts, and that in the last analysis is all the power that the bill gives it.

No great harm can come from elaborate powers given the Commission in way of getting papers and documents except expense and bother to the corporations.

It would be a physical impossibility for it to exercise its full powers in this direction, hence it is futile to make statistics as to how many freight trains it would take to convey the papers to Washington.

I object to the provision that the Commission may from time to time make public such information in such form and to such extent as it may deem necessary. There is danger of telling our competitors too much and giving half truths to the public. It is unnecessarily harsh publicity and I hope the bill will finally be toned down in this respect.

THE INTERLOCKING DIRECTORATES BILL

This bill attempts in four short sections to say who shall not be directors in corporations, to the end that competitive conditions shall be created and preserved.

In my opinion, as at present drawn, it will wholly fail in its object and will foster the very thing that it aims to prevent.

It will tend to create dummy boards and enable responsible men to exercise as much control as ever without the restraining influence of personal responsibility.

It will tend to create one man power corporations and thus render more unstable the investments of the public.

It is based on a mistaken or exaggerated notion of the machiavelian activity of the interlocking director.

I have been in business all my life and I have no hesitation in saying that those terrible charts of control through interlocking directors are worse than worthless.

As an instance, enough misinformation has been gleaned from them to bring out the statement that the General Electric Company and the Westinghouse Electric & Manufacturing Company are only alleged competitors. I say that is untrue.

If the whole interlocking directorate bill should be wiped out except the last section, and that should simply provide that the fact of a common director shall be prima facia evidence instead of conclusive that no competition exists between two corporations, it would probably be ample to cover the situation. In its present condition the bill is likely to do much more harm than good.

THE SHERMAN LAW DEFINITION BILL

This bill defines certain acts as restraints of trade which are now interpreted by the courts one way or the other as they are more or less small and insignificant.

It is said by the lawyers that under this bill as now drafted no concern could enter into an agreement with any labor union. If this is so, I imagine it will be promptly changed.

It is also said that the bill imposes upon every concern, no matter how small, weak or insignificant, the same prohibitions which the Sherman Act as now interpreted provides shall be applicable only to concerns so large as to threaten competition.

This is a bill for a lawyer to interpret; but, if it defines with precision what a corporation officer may or may not do to escape criminal prosecution, it will be an improvement upon the present uncertainty.

However, a careful reading of its very short and concise paragraphs leaves one with a feeling that the definitions are fully as vague as the Sherman Act itself; and, instead of improving, it further complicates a situation which has begun to be clarified.

TRADE RELATIONS BILL

This bill makes it a violation of the Sherman Act to discriminate in price, for the purpose of injuring a competitor or to fix a price upon the understanding that the purchaser shall not deal in the goods of a competitor and prohibits mines from refusing to sell to responsible people who apply to purchase.

The prohibition against discrimination in prices is intended to create sane instead of free competition and I think may prove to be a good provision.

As to prohibiting the fixing of prices upon the understanding that the purchaser shall not deal in the goods of a competitor, I do not view that as revolutionary although it might cause inconvenience to some to adjust themselves to it. On the whole I think it is fair.

The provision concerning mining companies is aimed to do away with price fixing, but I am not sufficiently familiar with that business to say how it would work.

It seems to me that there should be included in this bill a provision such as that recommended in the report of the Committee on Interstate Commerce from which I quote:—

> "There ought to be a way in which men in such a venture could submit their plan to the government and inquiry made as to *the legality of such a transaction; and, if the government was of* the opinion that competitive conditions would not be substantially impaired, there should be an approval, and in so far as the lawfulness of the exact thing proposed is concerned there should be a decision, and if favorable to the proposal there should be an end to that particular controversy for all time.

Section 13 of this bill, which permits any person to sue out an injunction against threatened loss or damage, might subject a large company to a multitude of strike suits. It should certainly be amended.

ANTI HOLDING COMPANY BILL

I have never seen a draft of this bill and I believe none has been *printed so a consideration of it is somewhat premature, but it is to my* mind fraught with more danger than any other of the business bills recently proposed.

It will be impossible to prohibit all Holding Companies without financial disaster, and just how the good can be separated from the bad in an act of Congress I can not imagine.

Public Utility Holding Companies, for example, are sound in principle, even though some are not so in practice.

Practically all large Corporations are Holding Companies to some extent and in many cases they are compelled to be so by the operation of State laws.

This bill deserves the most careful analysis and its final draft will be looked for with great interest.

Such a brief summary of these bills is entirely inadequate for any other purpose than to point out the extent to which the Federal Government proposes to regulate the business affairs of the country, and I have some fear that the impression which will be conveyed by the views which I have expressed will be one of doubt as to whether I am a reactionary or a progressive. I believe no good results can be obtained through wholesale condemnation, and I do not fear the principles which I have outlined, but I do fear the unknown dangers of untried legislation and should have preferred to see such vital changes tried one at a time; but, if that can not be, I hope the government will finally resolve all doubtfully dangerous provisions on the side of intimidated and apprehensive business interests.

The Proposed Trust Legislation

Speech of Henry R. Seager, Professor of Political Economy, Columbia University, New York.

THE feature of the proposed trust legislation which I have been asked to make the starting point for my comments is the Interstate Trade Commission. In urging the creation of such a Commission, President Wilson is certainly voicing the mature judgment of students of the trust problem. It is a logical development of the Bureau of Corporations established in 1903, on the initiative of President Roosevelt. It was urged specifically by President Taft in his trust message of December 5, 1911, as a necessary supplement to a federal law providing for the incorporation of interstate commerce companies, which he also advocated. Nearly every witness testifying before the Congressional Committees which have investigated the trust problem during the last five years has spoken in favor of it. Thus the President's anticipation that "the opinion of the country would instantly approve of such a commission" appears to be abundantly justified.

The Newlands' bill to create an Interstate Trade Commission has received more prolonged and careful attention than any of the other three measures now before Congress. It includes the essential features of the bill which Senator Newlands has urged upon his colleagues in the Senate for some time, together with additions designed to increase the efficiency of the Commission as the expert adviser of the attorney-general and the courts. In brief the bill provides:

(1). That a Trade Commission of five members shall be created to take over the work of the Bureau of Corporations;

(2). That corporations engaged in interstate or foreign commerce, except common carriers, shall supply any information that may be required by this Commission, either at periodic intervals or on special occasions, and grant access to their books and records;

(3). That such information shall be made public in such manner and to such an extent as the Commission may deem wise;

(4). That the Commission shall have power to subpoena witnesses and require the presentation of such books and records as may be necessary for its information and that witnesses may not refuse to testify on the ground of incriminating themselves, but shall enjoy the customary personal immunity;

Mr. Seager on Trust Legislation (*Continued*)

(5). That the Commission shall have power to investigate on complaint alleged violations of the anti-trust act and to report any violations it may discover to the attorney-general;

(6). That it shall also investigate any corporation at the request of the attorney-general or of the corporation itself to determine whether its organization, acts or relations with other corporations involve violation of the anti-trust act and report the changes in its organization, acts or relations with other corporations necessary to bring it into compliance with that act;

(7). Similarly, it may be called upon by any federal court to advise as to aspects of equity suits before it or proposed dissolution decrees under the anti-trust act;

(8). That nothing in the act shall interfere in any way with the authority and duty of the attorney-general to enforce the anti-trust act.

The bill is thus drawn to give the broadest powers to the Commission, but without in any degree weakening the responsibility of the attorney-general for enforcing, or the authority of the courts for interpreting, the anti-trust act. Though doubtless susceptible of improvement in minor respects, I believe that it is well calculated to achieve the ends aimed at without unduly burdening or interfering with business. These ends seem to me highly desirable and I, therefore, regard this part of the legislative program of the Administration as entitled to hearty support.

Advising the attorney-general when the anti-trust act is being violated and assisting the courts to draft dissolution decrees that will secure compliance with it, will be the chief duties of this new Commission. It will thus be a third arm of the government entrusted with responsibility for determining the application of the anti-trust act to specific plans of business organization and specific contracts and practices. One need not be the seventh son of a seventh son to foresee that this third arm will soon be the strong arm, on which the others—the attorney-general and the courts—will come to lean. Its work is to be advisory rather than mandatory but all of our experience with commissions points to the conclusion that its advice as time goes on will be more and more controlling. Under the law, not only is the attorney-general empowered to call upon it for assistance, but any one may address complaints to it, whereupon it must investigate and report its findings and recommendations to the attorney-general. Is it not inevitable under these conditions that that overworked official will soon come to feel that he is performing his whole duty if he undertakes the prosecutions that are expressly recommended by the Commission? In presenting a case in court he will, as a matter of course, give chief prominence to the evidence collected by the Commission and the reasons it may have urged for believing that a violation has occurred. At first the courts may not be greatly impressed by the reasoning of the Commission—the Supreme Court was not at first greatly impressed by the reasoning of the Interstate Commerce Commission—but as time goes on, will not the views of the Commission almost certainly prevail? This may come about through the deliberate conviction of the Supreme Court that it is less competent than the Commission to decide difficult issues wisely and its deference to expert opinion, re-enforced as it certainly will be by cogent argument. Failing this, it may come about through amendments to the anti-trust act made on the recommendation of the Commission and serving virtually to overrule decisions of the courts. Thus as time goes on government prosecutions under the anti-trust act are likely to be those urged by the Trade Commission and the interpretation of the act in connection with the prosecutions is likely to be that approved by the Trade Commission. The creation of such a Commission means inevitably an extension of government by commission. I am in favor of it because I believe that with the growing complexity of business relations, it is only through the guidance of commissions of experts that we can hope to keep these relations straight and to advance sound public policy.

Being in entire accord with the Administration's proposal to create a Trade Commission, I can only regret the more deeply other proposals that will in my judgment prevent that Commission from rendering the great service of which it is capable in guiding the policy of the country with reference to industrial combinations. The second bill in the Administration's program, designed to amend the anti-trust act so as to condemn expressly discriminatory price policies and selling contracts and to give private litigants the advantage of evidence collected or convictions obtained in government suits, is certainly commendable in purpose. We all agree that unfair methods of competition which enable big corporations to wrest markets from their smaller rivals, not because they can produce more economically or make a profit while selling more cheaply but through the sheer force of their larger resources and the wider range of their operations, must be stopped. If there is any doubt whether these practices would now be condemned under the present law as unlawful restraints on trade—and I do not personally believe that there is—it ought certainly to be removed by further legislation.

The measure against which I particularly protest as unnecessary and harmful is the third bill which undertakes not only to make the punishment for violation of the anti-trust act personal, as I agree it should be, but also to define the terms "every contract," "combination in the form of trust or otherwise" and "conspiracy in restraint of trade" and the word "monopolize," in conformity with the narrowest and most dogmatic conviction that every departure on the part of business men from unrestrained competition necessarily results in restraint of trade and is therefore to be condemned.

ADVANCE INTERPRETATION HAZARDOUS

To judge in advance what interpretation may be given to the phrases of this bill would be hazardous. The first, second and third lines of conduct condemned, that is, "to create or carry out restrictions in trade or to acquire a monopoly in any interstate trade, business or commerce," "to limit or reduce the production or increase the price of merchandise or of any commodity" and "to prevent competition in manufacturing, making, transporting, selling or purchasing of merchandise, produce or any commodity" are probably all fully covered by the present act as involving unreasonable restraint of competition or tendency to create monopoly. The fourth line of action condemned seems, however, to go much farther. If business men may not "make any agreement, enter into any arrangement, or arrive at any understanding by which they, directly or indirectly, undertake to prevent a free and unrestricted competition among themselves or among any purchasers or consumers in the sale, production or transportation of any product, article or commodity" without rendering themselves liable to conviction for crime and to the severe penalties provided by the anti-trust act, current methods of carrying on business in the United States will indeed have to undergo a modification. Under such a provision every understanding between railroads conveying passengers or freight between two cities, involving uniformity of rates, would be a violation of the anti-trust act. The schedule of rates of each railroad would have to be a matter for its independent determination, and if the law were strictly complied with, it would only be through the intervention of the Interstate Commerce Commission that the uniform rates, that have become well-nigh universal throughout the country and which public opinion very generally approves, could be maintained.

The truth is that our governmental policy toward railroads and other common carriers has long been inconsistent. The amendments to the Interstate Commerce Act giving the Interstate Commerce Commission complete control over rates, supplemented as it is about to be by the proposed measure giving it similar control over the issue of new securities, make the present restrictions of the anti-trust act, as laid down in the Traffic Association cases, illogical and unnecessary. Any further restrictions would, in my judgment, be highly undesirable. As regards the common carriers we are committed by the incontestable economic facts, as well as by the terms of the Interstate Commerce Act, to the policy of regulated monopoly. To deny it or to ignore it in amending or extending the anti-trust act is to fly in the face of the intelligent opinion of the country.

It has been customary among economists to draw a rather sharp distinction between railroads, telegraph and telephone companies, street railroads, water, gas and electric light companies and other public utilities, which are styled natural monopolies, and manufacturing, mining and other industrial companies. Monopolistic in their very nature, the first class of businesses will not be adequately regulated by competition. For them we need and have developed machinery for the regulation of rates and charges in the public interest, where we have not actually undertaken government ownership and operation. This distinction is entirely ignored by the present anti-trust act and is equally ignored in the proposed amending bills, from which it might be infered that competition in railroad rates—rate wars—were as much in the public interest as competition in the selling of dry-goods.

I am one of the economists who thinks the distinction between the so-called natural monopolies and industrial enterprises such as coal mining and iron and steel manufacturing has been too sharply drawn. That combination and monopoly in connection with supplying a city like Washington with gas or electric light, with government ownership and operation or government regulation of charges and quality of service, is superior to competition will be generally admitted. I believe it is still an open question economically whether the advantage is not with combination rather than unregulated competition also in some branches of mining and manufacturing.

ECONOMIES AND ADVANTAGES OF CONCENTRATION

You are all familiar with the argument. Let me take the steel industry as an illustration, since the steel trust has been much in the public mind of late. We have here a branch of industry in which concentration and large scale production make for economy until a scale of operations is attained calling for millions of dollars of capital and thousands of employees. The Carnegie Steel Company, the Jones-Laughlin Steel Company, the Illinois Steel Company all grew up under highly competitive conditions and each attained a gigantic size without passing the point where enlarging the scale of productive operations continued to make for economy in production. But when an industry is of such a character that success necessitates the investment of millions of dollars in each competing aggregation of producing units, you have a situation where the losses due to unrestrained competition are correspondingly enormous. In times of prosperity each producing organization expands to realize more fully the economies of large scale production. Iron and coke properties are secured to insure uninterrupted supply of raw materials, transportation facilities are acquired since the business is so large as to require for its exclusive use fleets of vessels and special railroad carriers, blast furnaces and rolling mills are built in convenient proximity to permit the conversion of raw materials into finished products with least expenditure of time and effort. This development is in obedience to the laws of expanding trade. If the industry is to be economically conducted it must occur. The public interest demands that it shall occur.

A period of depression now ensues. If each of the competing units pursues its own interest blindly, disregardful of the general good of the trade, each will compete desperately to secure the largest share of the diminished trade. Prices will be recklessly cut. It is better to operate mines and mills at low profits, at no profits, or even at a loss, than to have mines and mills shut down, the properties deteriorate and the skilled labor force that has been slowly drawn together dispersed far and wide over the country. There is thus no limit short of actual bankruptcy to which the competitors will not find it to their interest to go so long

Mr. Seager on Trust Legislation (*Continued*)

as they remain competitors. But why should they carry their competition to such reckless lengths? Will it not be better for each and for all to produce moderately at low profits until the depression has passed and conserve all the producing machinery for the time when business will revive, as it surely will revive, and all will again be needed? Is such combination to restrain competition opposed to the interest of the whole community? What useful purpose after all is served by forcing large numbers of steel plants into bankruptcy in every period of depression, with the result that the machinery for production becomes quite inadequate to meet the demand when prosperity returns and prices are forced to levels as unreasonably high as they were unreasonably low during the depression? Instead of having steel either prince or pauper is it not better to have steel a contented and moderately prosperous citizen at *all times? It is contended that this life and death competition* makes for more rapid improvement in productive methods, but does it? Under a regime of regulated combination each producing unit is still under strong pressure to cut down its expenses of production and to make its profits by that much larger. Is there any real evidence that improvements in methods have not been introduced as rapidly since the steel trust was organized in 1901 as they were before? In that period the open hearth process has been substituted on a vast scale for the Bessemer process. The steel trust has spent millions of dollars in developing its plants at Gary to the highest efficiency yet known in the industry. Its smaller rivals have been equally active. Although in many lines prices have been steadied and run-away markets in either direction prevented, there have been as eager efforts to improve on existing methods and to concentrate production at the points best fitted for it as there ever were before. I admit, however, that this aspect of the matter is debatable. The objection that I urge against this bill which attempts to define "contract," "combination," and "conspiracy in restraint of trade" is that it treats the point as though it were conclusively settled. If it becomes a law and if it is rigidly enforced, as with the aid of a competent Trade Commission it ought to be, our business men will be absolutely barred from taking any steps to restrain competition when its only effect may be to force some of them overloaded with fixed capital into bankruptcy and to so reduce the producing capacity of the country that in the next period of activity there will be as serious an under-supply as there was an over-supply in the period of depression. My plea is that with a Trade Commission empowered to compel full publicity of business operations and the law left as it now is condemning not all contracts and combinations in restraint of competition but only those in unreasonable restraint, we should be able for the first time to test the real merits of combination in the industries where it is claimed to be superior to unregulated competition. We have not been able to make the test in the past because unfair methods of competition have been used and because the opportunity to reap large returns at the expense of so-called "innocent investors" has given an artificial turn to the whole combination movement. The Trade Commission could put a stop to the use of unfair and discriminatory methods by calling the attention of the attorney-general to them and recommending him to begin prosecutions. The publicity of financial operations which it would require would curb the activities of the promoter and the high financier. Monopoly achieved by artificial means would still fall under the condemnation of the law. There would thus be scope only for restraints on competition which were believed by the Trade Commission and by the attorney-general, acting upon its advice, to be reasonable in the sense that the benefits they might confer on the parties to the agreement or understanding would be shared by the whole community. Would such a policy involve any real risk to the best interests of the country, which the proposed bill penalizing every relaxation of the ardor of competition would preserve? Would it not rather enable us to feel our way along toward a solution of this difficult combination problem that would be permanently satisfactory because balancing fairly the interests of producers and consumers?

POINTS FROM GERMANY

I said a moment ago that I thought the superiority of regulated combination over unregulated competition for other industries—not many but a few—than natural monopolies, was at least debatable. For this country it is debatable, because we have not proved how efficiently we could impose the necessary degree of regulation. For Germany, I submit, it is no longer debatable. German courts early took the view that combination to check an excessive fall of prices in a period of depression might be a good thing for the community as well as for the producers immediately concerned. Consequently regulated combination, not competition made obligatory, has become the established policy of that country. No one who has studied the results of the combination movement in Germany in moderating extremes of prosperity and depression and in promoting foreign trade can doubt that, for that country at least, the policy adopted, which is the exact opposite of the policy that would be confirmed and strengthened for this country by the proposed legislation, has been a good thing. German economists and public men are almost unanimous in approving it, though, of course, admitting that the machinery for regulating the cartels is still inadequate and that a vigorous governmental policy is necessary to prevent producers from taking advantage of consumers. Is it probable that a policy so generally approved in Germany is entirely unsuited to the United States?

Two objections may be urged against the policy of allowing even a little latitude to the combination movement under the supervision of the proposed Trade Commission. First, it has been said that if given the slightest encouragement the combinations would regulate the Trade Commission rather than the Trade Commission the combinations. This contention would carry more weight to my mind if it were not contradicted by our experience with the Interstate Commerce Commission. No corporations could be more powerful or more firmly entrenched in their privileges than were the railroad companies of this country when the Interstate Commerce Commission was established in 1887. It has been a long struggle but at no stage has there been any suspicion that the Commission was controlled by the railroads. Today the authority of the Commission over railroads is so securely established and so universally acknowledged that there seems more danger that the Commission will not show adequate consideration for the legitimate needs of the railroads than that it will fail to safeguard fully the legitimate rights of the public.

The other objection is the familiar one that such a policy will land us in socialism. I do not think so. I think rather that the creation of an able and efficient Trade Commission for the supervision of industrial combinations will insure for us the advantages of combination, which is one of socialism's most alluring promises, and preserve us from the great loss in efficiency in business organization and management which I conceive to be socialism's greatest weakness.

It is a trite remark that we live in an age of cooperation. My argument against the complete prohibition of anything like concerted action on the part of the directors of our great industries reduces to the plea that our business men be given a chance to cooperate so far as they can and will, but under conditions that will enable all of us to enjoy the benefits of their cooperation. So long as desire for private gain continues the dominant motive of those who engage in business, competition will remain a dominant force in business. But let us not make a fetish of competition! It also has its bad as well as its good side. While recognizing its value and making strenuous efforts to insure it a fair field for its operation, let us not ignore the fact that cooperation also has its legitimate place. On a higher moral plane than competition, its extension, under conditions that compel adequate regard to the public interest, must prove advantageous not only to business men but to the whole community.

The Democracy of Business

Remarks of Louis D. Brandeis, Boston, Mass.

I HAD hoped to participate in a discussion of the pending trust legislation, but a hearing before the Interstate Commerce Commission in the Advance in Rates case prevented my hearing what has been said by most of the speakers, and it would obviously be improper for me to attempt to refer to them and to what they may have said, when I know so little what it was.

I want, however, to say this: The program of President Wilson is not a program of free and unrestricted competition, but it is a program of regulating competition instead of regulating monopoly. This, too, should be remembered as coming from President Wilson: He laid down in his message to Congress certain broad lines upon which, in his opinion, the trust legislation should proceed, and it was then stated at the same time that the bills that were introduced were not the administration bills, but were bills of certain members of Congress or of committees which the public, business men and others had called upon them to present.

As far as I myself am concerned, while I unqualifiedly commend each of the provisions contained in the President's message on this subject, I find very much in the bill that needs amendment and correction; and I may say that I have found that those who have these bills under consideration, including the gentlemen who have prepared them, have the greatest desire to get such aid as they may get from those who speak with a view to perfecting them, pointing out their errors and pointing out the end which the administration has in mind can be accomplished.

The details of those bills are matters which are altogether too complex and cover altogether too much ground for me to take up here, but there are one or two others that hit one or two other precise points that I want to call your attention to in this connection, and the first is this:

TRANSPORTATION PREFERENCES AS AFFECTING EQUALITY

No one can possibly approach the subject of trusts, the subject of equality of opportunity to our business men, of which the trust problem is but a part, without realizing this great problem. Transportation is one of the privileges which places the greatest restraint in favor of a few upon a large number of the American business men. It has been said sometimes that you cannot follow up any industrial monopoly today without finding that some unjust and preferential transportation privilege accounts in large measure for the power possessed. That, obviously, was the case with the Standard Oil Company. It is obviously, also, the case in large measure with the Steel Corporation; and it has been true of a very large number of the other corporations.

Privilege, preference, discrimination in favor of very large and powerful interests in the transportation field have been the main causes of the overweaning growth of a few concerns as compared with the more struggling growth of many others.

This trust problem— and by that I mean the problem of giving to American business men an equal opportunity—cannot be solved unless there be effected a complete divorce of transportation from industry. We undertook a few years ago, in the Hepburn Act, to prevent the railroads from owning industries, from owning mines and manufactures, and in that way getting a preferential position which the ordinary shipper was not able to meet. The Act was narrowly construed by the

Mr. Brandeis on Democracy in Business

(Continued)

Supreme Court, but even if the fullest and most generous construction had been given to it, it would not have been adequate, because it is not only important that the railroads should not control mining and other industries, but that the industries should not control railroads; and, equally, that there should not be a holding company controlling both industries and railroads in the same interest. Therefore, legislation affecting that result is absolutely essential to the giving of equality of opportunity to American business men.

While legislation is necessary, the Interstate Commerce Commission has recently taken a very important step in that direction. Within a fortnight it has rendered its decision in the Industrial Railroads case which marks an epoch in American transportation. It has declared that the great industries owning for their own convenience as a plant facility industrial railroads shall no longer stand in a preferential position as against the smaller shipper who has not such industrial railroads.

Before that decision the basis of the facts which led to that decision was that the great industries owning these industrial railroads were receiving as a part of the freight rates, important services free—services so great in the aggregate, that it was estimated that the illegal allowances granted to these industrial railroads and the illegal services aggregated, in this eastern Official Classification Territory alone, $15,000,000; and when we consider that the whole amount which is supposed to be involved in this five per cent advance in freight rates is only about $50,000,000, you will realize how important is that preference enjoyed by the great industries. There is now a proceeding before the Interstate Commerce Commission calling for a consideration of questions quite similar in principle to those involved in this case—services which are granted by railroads free, in addition to the line haul, to certain industries, mainly, the larger industries—not secretly, not in any sense illegal as to create in any way a moral taint, but actually rendered under circumstances that only the large interests can avail of.

Today we have been discussing at great length before the Interstate Commerce Commission what is called the "Trap" or ferry car service, granted free to those who have spur tracks to their industries. Under that the large shipper who has not only a spur track but who deals in such large quantities that he may send to the freight houses for trans-shipment at one time 10,000 pounds of freight in less than carload lots to be trans-shipped in less than carload lots gets what is equivalent to his truckage free, whereas all the smaller shippers must bear the truckage charge, heavy though that may be.

That is but one of many industries which, the investigation of the Interstate Commerce Commission has disclosed, is receiving, owing to the circumstances under which it operates, from the railroads a service very much greater than the smaller shipper receives—receiving free a service which the great mass of shippers cannot participate in at all. And just as in the Industrial Railroads case it appears that those special services and allowances have been depleting the revenues of the railroads to the extent of $15,000,000, so those very services granted to individual circumstanced as only the larger shippers can be are taking from the railroads a very huge revenue in the aggregate.

When we come to consider this broad question of equality of opportunity which, for short, is sometimes called, rather inaccurately, "the trust problem" we must bear in mind this feature, that there is going on in the railroad world today a discrimination against the small man that has nothing to do directly with his efficiency. He may be ever so efficient, but if he is small, if he is unable to ship in large enough quantities to avail, for instance, of this truckage service, his competitor, who is big, gets an advantage which, in the aggregate, is very big against him, and he moves on, not through superior efficiency, but through a preference that is given to him; and in the course of that preference you are taking from the railroads a very large revenue.

Those questions must be considered when you come to deal with the broad business problems to which the present administration is so earnestly directing itself.

ADVANTAGES LYING IN GREAT INDUSTRIES

There is one other feature in regard to this matter that I venture to call to your attention. I understand that Secretary Redfield has spoken about the relative efficiency of the large and the small plant. It seems to me that the limit of efficiency in business is reached at a fairly early stage; that the disadvantages of size outweigh in many respects the advantage of size; but there is one respect in which the great industry has an important advantage. That is in the collection, the getting of knowledge, the collection of data in regard to trade, that knowledge for which great concerns extend their bases of inquiry all over the world; and they have great capacity in the different parts of this country to know the state of the market, to know what is being done, to know what are the possibilities of trade, and also in their work through the laboratory. Laboratories are maintained, and they can be maintained only by great concerns.

That gives a perfectly legitimate advantage to the great industry—one for the pursuit of which our great captains of industry are to be commended.

We must also remember that we are working here in America upon the problem of democracy, and we cannot successfully grapple with the problem of democracy if we confine our efforts to political democracy. American development can come on the lines on which we seek it, and the ideals which we have can be attained, only if side by side with political democracy comes industrial democracy.

It is the relatively small man who pre-eminently needs the aid and the solicitous care of industry and of government. We have, gentlemen, to bear all the time that democratic view in mind, and to bear in mind that education does not end with the common school, nor does it end with the university. We are beginning throughout the country to talk now of vocational training. But where shall vocational training end? Not merely with the training of the individual for the bit of work that he is to enter into. That training must continue throughout life, and that training must extend to every part of his business life.

In what is perhaps the greatest department of our business—in the business of farming—we have come to recognize that fact, possibly because the need of greater efficiency in farming is more marked than it is anywhere else; but the Government has undertaken, with the good will and to the gratification, I believe, of every citizen, to give to the humblest farmer an opportunity to acquire the best knowledge which America affords. Through the agricultural experiment stations of state and nation, through the great work of our Department of Agriculture, we are undertaking to advance in every possible way the efficiency of the farmer.

The Government recognizes its duty to give to the farmer the opportunity of education. By giving him, on the one hand, all the knowledge of the state of the market which can be obtained, and giving him, on the other hand, the best results of all the research that we know. What better could the Government of this country do than to extend to business that care and solicitude and aid which it shows in the case of the farmer? To make it affirmatively the business of the Government to extend to the manufacturer throughout this country the opportunity of knowing about his particular line of manufacture the best that can be known, because every man among us who is adopting any process in business which is not the best is guilty of a waste from which all of us are suffering. The best that there is, the most advanced knowledge in every department of business, is that to which every American citizen, every American business man, ought to be entitled, and more.

Why should not we recognize in the great realm of business those principles which have been the common property of the most advanced thought? Every man in the medical world glories in having given to the world something which advances medical science. Every man in the field of architecture glories when he can give to the world something that advances architectural science. You will find exactly the same thing in almost every department of engineering. Why should it not be so in business? Is there any lack of opportunity for competition, honorable competition, in the field of engineering or of architecture or of medicine? They can play the game wherever a man can see it. There need be no secrets when it comes to the question of advancing the art to which man devotes himself. And the same is absolutely true of business and will be recognized as true of business as soon as men come to recognize that business is one of the noblest and most promising of all the professions. And in the carrying out of this idea of advancing business, of putting business into its proper place among human activities, the Government of the United States may play a great part. I look forward to the trade commission which we are about to establish as an instrument which will be of inestimable advantage to the business and the future of America by making the common property and the common knowledge of American business men the best that has been done and is being done in every department of business throughout the world."

Referendum on Antitrust Legislation

THE Second Annual Meeting, passed the following resolution unanimously.

Resolution.

Whereas, **Congress is now calling upon the business interests of the Country for an expression of their views on legislation recently proposed relative to the Sherman Act, the Board has authorized and directed the President of the Chamber to at once appoint a Special Committee of not less than seven to study and analyze all bills, tentative or actual, which may be obtainable, and to prepare a referendum to the membership of this body on the principles of the subject matter involved.**

Now, Be It Resolved, **that this Convention heartily approves such action and that such referendum be taken and further that this Convention wishes to express to Congress its desire to co-operate to the fullest extent in securing from the business interests of this Country a full expression of constructive opinion on the principles of the subject matter in question.**

Be It Further Resolved, **that the result of such referendum be promptly reported to the proper Committees of Congress, and**

Be It Further Resolved, **that said Committees be furnished with copies of this resolution.**

ACTION TAKEN IMMEDIATELY

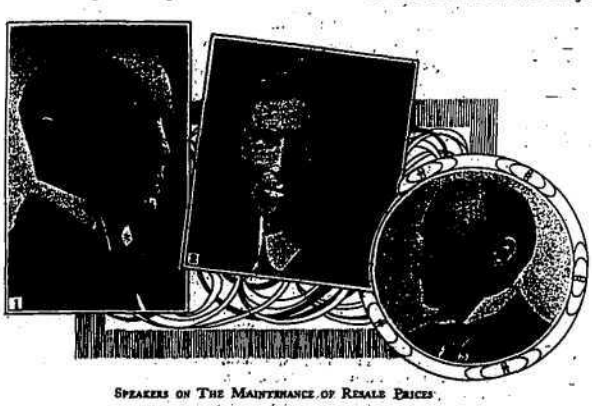
The chairman of the above-mentioned Special Committee is Hon. R. G. Rhett, of Charleston, S. C. The following gentlemen will also act:

President Charles R. VanHise, University of Wisconsin; Guy E. Tripp, Chairman Board of Directors, Westinghouse Electric and Manufacturing Company; W. L. Saunders, President Ingersoll-Rand Company, etc., New York.

The entire membership of the Committee will be decided upon by February 24th. A meeting of this Committee has been called to be held at the Headquarters of the Chamber, Riggs Building, Washington, D. C., on Tuesday, February 24th, at 10 A. M.

Speeches Regarding Resale Price Maintenance

The question of the right on the part of a manufacturer to define the prices at which an article manufactured by him may be sold at retail was discussed from two points of view. On the one side Wm. H. Ingersoll of Ingersoll and Brother, argued against the practice of cutting prices on advertised goods as a leader for business in relation to goods not advertised. On the other side Mr. Donald Dey of Syracuse, N. Y., asked for the freedom of retail stores to contract to buy and to make arrangements to sell, without legislation being placed upon the books relative tc the details of the subject. These speeches are printed almost in full.



Speakers on The Maintenance of Resale Prices

1. Hon. Jos. E. Davies, Commissioner of Corporations
2. Wm. H. Ingersoll, New York City. 3. Donald Dey, Syracuse, N. Y.

The Problem Introduced

Speech of Hon. Joseph E. Davies, Commissioner of Corporations.

THE discussion of this morning's session is addressed to the right of the manufacturer to establish at successive stages the resale price of the goods of his own manufacture which shall be binding through the various stages, even to the extent of being binding upon the retailer in his final resale of the goods to the consumer.

This practice has obtained in the past with reference to patented articles, as well as to those non-patented, and has developed coincident with the development of modern advertising methods.

For a number of years it is alleged that the decisions handed down by the lower courts were generally favorable to resale price maintenance as to copyrighted and patented articles. In recent decisions of the Supreme Court of the United States, however, the practice of fixing a resale price has been declared illegal.

In 1907, the Supreme Court of the United States, in the case of Bobbs-Merrill Co. v. Straus (210 U. S., 339) denied the right of a publisher to maintain the resale price on a copyrighted book.

In 1911, in the case of the Dr. Miles Medical Co. v. Park & Sons Co. (220 U. S., 373), the same court held that an attempt to fix the resale price on articles of general use, except those produced under patents or other statutory grants, would be against public policy and void.

In 1913, in the case of Bauer & Cie and the Bauer Chemical Co. v. James O'Donnell (229 U. S., 1) the Supreme Court of the United States denied the right of a manufacturer of patented articles to limit the price, by notice, at which future retail sales of the patented article were to be made.

It is now urged that this practice should be sanctioned by law, and that an express statute should be enacted to give to manufacturers, under certain restrictions, the right to fix the price at which the articles of their manufacture, respectively, should be finally sold to the consumer.

The Bureau of Corporations is now engaged in making an exhaustive study of the question from an economic point of view. It is our purpose to make that investigation fair and impartial, without preconceived bias, prejudice or judgment. For that reason I express no opinion upon the merits of the question at this time. It can be said, however, that this question is not a simple one. It is most far-reaching in its effect. There are excellent reasons advanced in its favor and strong arguments urged against it. Its importance is not confined alone to the manufacturers, the wholesalers, the jobbers and the retailers; in the matter of the cost of living it affects very vitally the great body of consumers in this country. In the processes of production from the raw materials to the final consumer—the processes of extraction, manufacture and distribution—it is commonly stated that one of the greatest factors contributing to the high cost of commodities is found in the latter process, to wit: the process of distribution. This question has vitally to do with that particular phase in the economy of the nation. It is a statement of inexorable fact that no system of distribution that does not ultimately and fundamentally conserve the interest of the great masses of people will ultimately obtain; and that the interests of manufacturer and distributor alike lie in the establishment only of such a system as will conduce to the well-being and advantage of the great body of consumers; for in that alone is there assured lasting profit and advantage to the producer and manufacturer and the retailer.

In our investigation of this question, we find the advocates and opponents of the proposition earnest, able and enterprising men—broad-minded, far-seeing and patriotic. There is a splendid tolerance and recognition by the proponents of each point of view that the other is honest in his conviction. It has been recognized by both sides that what is primarily needed is a comprehensive exposition of the facts. This is where we hope to serve. Without bias and without prejudice we are pursuing this investigation and are collecting our information from both sides with equal fairness.

It is one of the significant characteristics of the new day that has come that men of large vision and capacities in the business world are giving more of their best efforts to cooperation with the agencies of government for the ultimate well-being of all men who make the nation. We are meeting with this character of cooperation in this investigation, and we ask your continued aid as business men in our work on this problem.

Relative to Price Juggling

Speech of Mr. Wm. H. Ingersoll, of Robert H. Ingersoll and Bro., New York, a member of the American Fair Trade League, New York.

THE thing that impressed me in Commissioner Davies' introduction was his observation that in this question of the regulation of resale prices, the controlling consideration must be the fitness of any proposed system to conserve the interests of the consumer and I am sure that there was no narrow gauge of the consumer's interest in the Commissioner's mind when he made his declaration. He would not measure any trifling temporary advantage against great and fundamental considerations of the public interest, and in this country we have one heritage and so cherished that our people are not prepared to put it lightly aside. One thing above most others dear to the American heart is to keep the way open for individual enterprise. We treasure the tradition that there shall be equal opportunity and that the man of small means, as well as the man of great means, shall have his chance and shall profit in proportion to his ability to serve the public. It is from this standpoint that this question of resale price maintenance is of importance, but first, it seems to me, that we need to come to an understanding about the use of terms.

The phrases "fixed prices," "price maintenance," "resale price maintenance" and "price cutting" have been freely used in the Commissioner's introduction, and to those who have at heart the adoption of a system of uniform prices on trade-marked products, it seems unfortunate that such a term as "fixed price" should be applied to the proposition, because to the public generally fixed prices stand for that obnoxious and condemned practice indulged in by the trusts and by combinations among those who had the control of a necessity of life and used this artificial process for extortionate prices. In the proposition of resale price maintenance there is no element of combination and I advocate that the right be granted only to those who are engaged in competitive business. "Price maintenance" also is an unfortunate phrase, because it sounds as though the system involved the holding up of prices; as though it meant high prices, when—as a matter of fact—I believe it to be the most economical method of marketing merchandise, and I am certain that no man who thought it involved high prices would have the hardihood to stand up in public and argue for it.

"Price standardization" is the term that describes the system best to my mind; it means—not high prices, but standard prices to all, the same thing for the same money to everybody upon fair and equal terms. The subject, as a public question, is a new one. It is not generally understood and in fact is quite generally misunderstood, notwithstanding the importance which the Commissioner has very properly accorded to its bearing upon the cost of living.

The situation puts me in mind of a saying which my father used to use. In human nature there seems to be an inherent aversion to change and to new things. As he expressed it—if we are not up on a thing we are pretty apt to be down on it.

Sometimes it is easiest to explain what a thing is by showing what it is not. To show you what price maintenance is not, I would like to cite an instance of the findings of the "Association for Improving the Condition of the Poor" in a recent investigation conducted in New York. There they found a chain of stores selling coffee out of the same bin at 26c and at 36c, according as to whether one ordered the cheapest or best coffee. Tea out of the same canister brought 35 to 70 cents a pound. Split peas wholesaling at 4-1/5c a pound sold in two of the stores at 8c a pound, and in a third store of the same chain at 9c a pound. Now that is not price maintenance—it is not the same thing at the same price to all buyers, and I submit that it is an infinitely less desirable system from the standpoint of the buying public.

I agree with the Commissioner that the public wants that system of distribution which produces the best results, but, as I said before.

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we have no desire in this country to lose the substance in grasping for the shadow. We want liberty and we want the freest and most unfettered system of trading with one another that we can have, without interfering with the same liberty for our fellows. Liberty under law is our ideal, with perhaps the emphasis upon "under law." Any system of distributing merchandise must be judged by its fruits, and it is appropriate, therefore, that we examine the result of the system under which we now operate. From the standpoint of the question before us, namely—the maintenance of resale prices—what choice of systems have we? Obviously there are but two open prices, which means unregulated, unsupervised competition where the survivors survive through sheer strength, or a system involving some sort of regulation. How is our present open price system operated? Is it giving the public the benefit of satisfactory values? Is it consistent with the ideal of keeping the way open for the small man? As we look about us any one can see that there is a pronounced trend toward monopoly in the retail market. In this country we have something like 1,250,000 retail stores. With their clerks they number something like 4,000,000 people and including their families there are, perhaps, 4,000,000 more, making a total of nearly 10,000,000 people directly dependent upon the retail store outlets for their living. The retail market is not only the largest and most important in the number of people involved, but likewise in the aggregate volume of its transactions it can sustain the entry of corporations doing a business of $100,000,000 a year at retail, with hardly a ripple on the surface of this market. It is a big stake for capital to play for and under present conditions it is peculiarly susceptible to the manipulations of large aggregations of money. The preservation of fair conditions in this great and important market is of direct interest to the people who buy daily across counters of the retail establishments, and anything which hurts this under-work of retailers reacts immediately upon every community in the country. Time does not permit an extended examination of this tendency for the retail business to become concentrated, but a few examples will illustrate.

There are three types of great retail institutions which are being rapidly fostered. One is the chain store system which is in reality many retail stores under a single ownership. Second is the department store, which is an aggregation of stores in various lines under one roof, and the third is the mail order house, which transacts its business at long range. These three types of retailers are absorbing the retail market so rapidly that those who have kept watch of the tendency are wondering how long it will be before the independent store has been practically eliminated. Take the drug line, in New York. A few years ago every drug store was operated by the proprietor, who managed it. Today the drug market there is dominated by a chain of stores which have recently been purchased by the president of a chain of cigar stores which stretches from coast to coast.

In Philadelphia, the grocery business is being speedily monopolized by chain stores. Notwithstanding the growth of the city there are today less than one-half the number of grocery stores there that there were five years ago and many are wondering how long it will be before Philadelphia is dependent upon a single grocery concern for its food supplies and what it can buy and what it must pay.

As to the department stores, they are springing up everywhere. Each individual local market is becoming concentrated largely within the department store and now these department stores are themselves being combined into a great chain, one—for instance—controlling some fifty of these stores, largely dominating nearly fifty of our principal commercial centers and doing a business of about $100,000,000 annually. Similarly, the mail order houses are absorbing the business. We have, for instance, in Chicago, a single house so gigantic in proportion that its 1200 page catalogue is in every third home in the country and I am told is more actively used than the family bible. This concern uses two tons of pins a month to pin its correspondence papers together. It owns or controls something like 127 factories, I am informed, and does a business of nearly $100,000,000 annually. Now a concern of such proportions is several times larger than some of the industrial trusts which the Government has sought to dissolve, and I cite this only to show the immensity of the retail market and the power that will come to those who succeed in dominating it if such a condition is permitted to arise. Please understand that I am not criticising these companies—they are the inevitable result of the necessity under which our business is operating today. We cannot blame these men who are successful under the rules that we lay down—blame the rules—and if they are not producing satisfactory results, change them.

Boyd's lists offer to furnish the names and addresses of 10,000 systems of chain stores everywhere. In every market worth cultivating these little chain systems are springing up ready to be linked with other chains and formed into a national combination.

Under present conditions the individual merchant is doomed. I know that there are some who regard this as a beneficence and I make no complaint that some men succeed more than others, but the elimination of the independent merchant cannot be said to be a good thing unless it is brought about by fair and natural causes. If it is accomplished by unfair, unsound and artificial methods, it cannot but have an unhappy effect upon a people which tolerates survival on such a basis, and I simply point out in passing that our present unscientific method of granting quantity prices puts a premium upon mere size and furnishes an overpowering concentration to large capital to buy up a sufficient number of stores to secure a large enough output to command lower prices and with the advantage of these lower prices to undersell and eliminate the individual merchant. If it were customary to scale quantity discounts upon any scientific measure of the real advantage which the quantity orders conveyed, we might say that we were having a taste of the genuine efficiency of large units, but when we remember that manufacturers generally give quantity discounts which are out of all proportion to any savings which the quantity orders permit, we must acknowledge that when all of the business comes at the lowest quantity prices, the manufacturers will be compelled to raise those prices and the public will have no advantage in the end, but necessity will have eliminated, unfairly, the many independent merchants who formerly competed for patronage.

We have been considering the fruits of the present open price system of doing business—it is unquestionably leading to monopolistic conditions in the retail market. Can we be satisfied with this result? Can we tolerate a condition where those who manufacture goods and those who consume goods find placed between them a few great middlemen, who shall say what goods they will market and what goods the public can procure and at what prices?

If we take up the evening newspaper we find it filled with bargain offers. Page after page confronts us of goods offered usually at a third less than they are said to be worth. If such representations were true, society would be footing the bill in underpaid wage-earners, underpaid sales clerks and in business failures, but they are not true.

In the Cincinnati Trade Review of September 4, Mr. J. J. Stokes, Manager of Marshall Field & Company, is quoted to say that "9/10 of all bargain advertising is made up of falsehoods and exaggerations."

A few months ago, when Mr. William C. Freeman took the management of the advertising of the New York Tribune and determined to purify its advertising columns, he announced that "only a possible five out of the total number of New York department stores are doing honest advertising." In fact the advertising men all over the country are forming vigilance committees to remove the stigma from their profession, by driving out the fraud. Now who is it that can afford to take these expensive page advertisements? Who is it that is abusing the advertising appeal for business? To their shame it must be said that the great offenders are the sensational department stores and chain stores. The little man cannot afford to advertise on this scale, even if he wanted to. Here is a force which the big man can use and the little man cannot, and the big man is permitted to abuse it. No one could complain of truthful advertising, but we all can blame, and should, all advertising that is dishonest. These advertisements go out from every trade center and blanket the country—they make the public feel that the little store cannot give bargains and that they must save up their purchases for trips to the city, or must send their money by mail to get its full value. They trade less at home and the local stores suffer, not through any fault of their own—for as a matter of fact they can offer values equivalent to their big competitors. Investigation shows that the operating expenses of the big stores average something like 10% higher than the small stores, which offsets most of their buying advantage, so they do not represent any true economy. Young people growing up in our small towns do not find opportunity there, because local business does not thrive and here we find a contributing cause to the congestion in our big cities.

Now perhaps you ask how do these things involve the resale price? The answer is not far to seek. The exaggerated advertising and the claims for cut prices offered on all kinds of miscellaneous merchandise, which the people have no means of knowing, call for every possible support to lend credibility to their statements. We have in this country many standard brands of merchandise which are known from coast to coast. Such things as Ivory Soap, Kellogg's Corn Flakes, Waterman Fountain Pens, and so on. These goods are not only known, but their values are equally well known. What could be more effective than to offer these nationally known articles at genuinely cut prices, as a means of bolstering up the admittedly fraudulent claims on all kinds of unbranded goods? It is because of the general practice of cutting trade-marked goods for this purpose, that the question of standardizing resale prices of trade-marked articles is before us. Think of it. These products which have earned for themselves a reputation known in every household throughout the country are made unwilling accomplices in public deception and to the serious injury of the very merchants who would like to sell these goods fairly. Now if no one was injured by the practice, there would be no indictment of it, but when such a method is used to tempt trade away from its natural courses, to injure the general run of small merchants, to impose upon the public and to depreciate the worth of these well known products in public estimation, it becomes a matter of national concern. Let us consider it simply on the basis of the injustice to the products themselves and the injury it does them, for the American people ask no bargains, when it involves injustice to others. See how obviously it lowers the value of these articles in the public mind to have them sold at prices below their actual worth, for oftentimes they are sold really below cost, to say nothing about being sold below a price that would be necessary to cover the cost and the operating expense of the store. When one of these well known articles, for example, a 25c package of chocolate, is offered at 16c, people cannot know the ulterior purpose of the offer and they conclude that the goods could be sold at such a price regularly. They are unwilling to pay more. When such price becomes established in a given community, other dealers find that they cannot sell the goods at the regular price and of course they cannot afford to sell them at a less, and of course they sell out the line and stop handling it at all. The maker's market for his product in that community is then seriously impaired through no fault of his own. Furthermore, the public itself is inconvenienced, because it does not thereafter find the goods on sale and is compelled to experiment with some new and unknown thing, for even the price cutter will not continue indefinitely to supply the goods at the price which he himself has established, at an unsatisfactory profit. How clearly it becomes evident that such price cutting is a restraint to trade. It restrains the business of the manufacturer and it restrains the freedom of the public in getting goods which they ought to be permitted to have.

Where is the Waterbury Watch, for example? It was slashed un-

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til nobody would sell it and nobody was willing to buy it, because nobody knew when he was getting the bottom price. Such price cutting, when used as a device to promote the concentration of retail business and divert it from natural channels is a public calamity which must not be permitted to continue and with all regard for the important investigation which the Commissioner has described as being carried on now by this Bureau, I submit to this audience that whatever his findings, on an economic basis, the people of America will not sanction the continuance of such injustice to any element of our population as is now being visited upon the manufacturers of our most highly regarded articles of merchandise. No showing of petty bargains, even if they could be established, could compensate for the wrongs visited upon the sufferers from such abuses, especially when we consider that there is no way of measuring the imposition which the practices enable the price cutters to foist upon the people.

Now the foregoing is probably familiar to many of you, but there may be some fresh thought in a consideration of the issues involved in the controversy as to the merit of a system of resale price maintenance which is favored by almost the whole business community. Why, if this price cutting hurts them, do the manufacturers permit it to go on, you may ask? Because under present law they are powerless to prevent it. Having sold their goods to others, they no longer have any power to control the methods by which they are marketed, and the dealers who temporarily own the goods are free to do with them as they please, *regardless of how it injures others.* That is the technical legal ground as at present interpreted by the Court. Back of it is the assumption that to allow manufacturers to exercise any control over resale prices would mean high prices and the further assumption that cut prices mean bargains and savings to the people and therefore are demanded on grounds of public policy. It is also contended that the freedom of the market demands that there be no control by manufacturers after they have sold their goods.

The Commission has explained the cases which have come before the Supreme Court of the United States which have determined this question. I am not a lawyer, but I presume that I am entitled to my opinion and if I read the findings of the Court aright, the real questions involved have never come squarely before the Court for decision. There is no definite law on the subject. It is simply that the Court itself has declared in these cases what it considers public policy to require. In the absence of any statute, we are operating under Judge-made law. Most of us here, however, are not interested in the legal aspect. We want to know what is right and then we will square our laws to that. It is appropriate, therefore, to test the claims that such price cutting means bargains to the people and an advantage. We have seen the object of such price cutting and how can we expect any good thing to result from a practice conceived in such duplicity? But let us view it from another angle. Since the various decisions of the United States Supreme Court, the last of which was handed down in May, 1913, touching this question, a most important case has been decided by the Supreme Court of the State of Washington in the case of the Fisher Flouring Mills Company vs. C. A. Swanson, a price cutter. All of the considerations were carefully considered by the Court and with respect to the claim that it meant a saving to people, the Court, in its decision, declares "It is a fallacy to assume that the price cutter assumes and pockets the loss. The public makes it up on other purchases."

On the same subject let me summon Mr. John Wanamaker, perhaps the greatest of all living merchants. In the report of the Industrial Commission, Vol. 7, page 465, he is quoted as saying: "I want to keep away from the store that tries to catch me with that kind of a fishhook. If they lose on one thing they will put it on something else you don't know of. There are things purchasers don't know anything about." That's the point. There are *things the purchaser does not know anything about.*

As public policy we have seen the heavy cost of price cutting in the form of substitution and imposition. It stifles trade. How accurately the Hon. John Barrett, through whose good offices this meeting is held in this splendid hall of the Pan-American Union Building, gauged the situation when he put out the Handbook of the Panama Canal at a maintained resale price of $1. He wanted that book to be widely read; he wanted the information which it contained to be spread throughout the country, and he knew if there were no incentive to book-sellers to handle it, that he had no facilities for getting it before the people. When the book was put out on this basis, by the Pan-American Union, an inquiry was sent by the Secretary of the American Fair Trade League, asking about the object. In responding, Mr. Barrett said "My object in fixing the price of $1 for our Panama Canal Handbook was, *as you suggest, to protect the average retail* buyer or consumer. I saw at once that there would be a tendency to over-charge for it, or to sell under the price, in order to get a little advantage over some other dealer and hence I made it a condition of purchase that each retailer should sell it for $1." Poor, unsophisticated John Barrett. He had nothing but common sense to guide him. He did not know that it is declared to be in restraint of trade and banned under the law to adopt measures which will expand the sale of a product and so he took the most efficient marketing policy. There is at least one satisfaction to those who have tried to maintain their resale prices, in knowing that if they go to jail, they will enjoy the society of Mr. Barrett and the Ministers Plenipotentiary from the twenty other countries whose representatives constitute the Directorate of the Pan-American Union.

But from the standpoint of keeping the way open and preserving the opportunity for individual enterprise from monopolistic pressure, which is a heritage more valued than any trifling bargains, even if they are real, what are the aspects of the price standardization question? Let me quote from the recent report of Secretary Redfield, where he discusses the pros and cons of the matter.

> "Some men, well informed, argue that the fixing of retail prices under conditions where competition in manufacture exists, tends to promote competition. Others say that the refusal to promote the fixing of retail prices tends to monopoly, because in the cut-throat competition certain to follow, obviously the stronger competitor will survive and may eventually have the business in his own hands, for the law forbids the making of agreements to maintain prices and under these circumstances the weakest must go to the wall."

Again, let me quote that champion of the people's rights, Mr. Louis D. Brandeis, who says in a recent article in Harper's Weekly:

> "Americans should be under no illusion as to value or effect of price cutting. It has been the most potent weapon of monopoly, and means of killing the small rival, to which the trusts have resorted most frequently. It is so simple, so effective. Far-seeing organized capital secures by this means the cooperation of the short-sighted unorganized consumer by his own undoing. Thoughtless or weak, he yields to the temptation of trifling, immediate gain; and selling his birth right for a mess of pottage becomes himself an instrument of monopoly."

Samuel Untermeyer, who conducted the recent Pujo money trust investigation for the Congressional Committee, expressed similar views last week at a hearing on the present corporation bills now under consideration in Congress. But it is a matter of such common knowledge that we do not need even the testimony of these men to know that the Oil Trust and the Tobacco Trust were intrenched by price cutting, which enabled them to kill off smaller competitors, just as price cutting is killing the smaller merchants today, regardless of their value to the public.

What now of the contention that the manufacturer has no rights in the resale price question, after his goods become the property of others? Ought these others be permitted to do as they please? Again, I would like to refer to the case decided in December by the Supreme Court of the State of Washington, and I emphasize the point that this decision has been handed down since any of the decisions by the United States Supreme Court on this question. The Washington Court says:

> "It will not do to say that the manufacturer has no interests to protect, by contract, in the goods after he has sold them. They are personally identified and morally guaranteed by his mark and his advertisement."

There we get to the centre of the question. It is fallacious to say that the manufacturer has no interest, simply because he has temporarily entrusted to the retailer the marketing of his product. In effect his wares have simply been placed in a local depot until his customers call for them. Mr. Kellogg can no more get rid of the responsibility, if his Corn Flakes are found unsatisfactory, than the housewife can escape the condemnation for a poor batch of cooking. People will not blame the local merchant, they will blame Kellogg *if his goods are bad.* The law which declares that the rights of the manufacturer of trade-marked goods ceases when the title passes, is based upon a bygone day. The slogan is now—buy at our risk—we guarantee—the manufacturer stands back of his goods. Very generally he takes back if they do not sell. He makes them good if they are defective and his guarantee goes clear through to the consumer. Shall the middleman do as he pleases because the goods are temporarily in his hands? The knockout argument of those who are against price standardization is that the dealer buys the goods and can do what he likes with them. But does this stand examination? I may buy a pistol, but I have to be mighty careful how I use it. I may have cocaine, but I have to be careful about selling it in a manner detrimental to public interest. And the dealer must not be permitted to use trade-marked goods in a way that is deceptive and detrimental to the public, or that deals injustice to the man who made those goods. *Freedom? Yes, again let us remember, liberty under law*—liberty with regard to the liberty of others—to live and enjoy the result of their labors. More than this amounts to license.

We can safely say that when a retail merchant in selling a product resorts to the use of another man's name as the maker and guarantor of that product, he is morally bound and should be legally bound, to respect the rights of the man whose name or brand he calls upon as an assurance to the public that his bargain is genuine.

Now we have seen the result of the wide-open policy and how it is making for consolidation. We have seen how the trade-marked article is employed to pull chestnuts out of the fire for the unknown goods. No one denies that serious abuses exist. How shall they be overcome? It is plain that we have much reason to entrust to the individual manufacturer in a competitive field the authority to regulate and standardize the resale price at which his trade-marked goods are sold to the public. It settles down really to a trade-mark question. No article serves the purpose of price cutting so well as a standard article with a well-known value. The very fact that such goods are individualized and identifiable, because of their trade-mark, is the reason that they are subject to this form of malpractice. Congressman Oldfield is quoted, in a recent interview in Printers Ink, as saying that he was against granting to the trade-marked product the price standardization proposition, for the reason that he considered it a discrimination, citing as an instance, that the laboring man could not trade-mark his product and he says, "We have then the spectacle of a system which confers upon one class of our population privileges

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which can not be enjoyed by other classes of the community." Now isn't that just like Oldfield? And without knowing anything about it, I venture that he voted in favor of exempting labor unions from prosecution with the funds voted in the recent appropriation bill. Because these trade-marked products are subject to injury, solely because they are so marked, he would deny them the reparation that would place them on a footing with goods which can not be discriminated against because they are not so marked that anybody can identify them. Mr. Oldfield mentions labor. I wonder if he has thought back to the origin of the trade-mark and if he knows that it is found in the fact that in times past when men wrought according to the best that was in them and brought forth that of which they were justly proud. They put their mark upon them, as a sign of pride in their workmanship.

No brand was injured by the New York stores that sold bulk coffee at 26 or 36 cents the pound, according to the customer, and the reason that the trade-mark received wide welcome was this very fact, that before it came there was a lack of uniformity of goods and who was responsible for them and the lack of a guarantee, all of which gave rise to the trade-mark. Its coming removed one big element of doubt as to the quality and uniformity and it saved haggling and doubt and experimentation with unknown goods, which had to be repeated with every purchase. It saved wasted time and disappointment and supplied a sign by which unsatisfactory goods could be shunned. It gave the basis for the one price system, the standardized quality at the standardized price, the same thing to everybody for the same money. When the consumer buys such trade-marked goods, he buys not the mere physical product, but he gets with it an assurance of certain definite quality. He knows that the article is exactly the same, whether bought in one store or another, and I challenge any one to produce an instance where any well-known brand of goods has ever been offered at a cut price, without the brand being featured. Would anybody think of offering Ivory Soap at 3 cents a cake, and instead of mentioning that it was Ivory Soap, would go on with a long description about the quality and what the soap was made of and what it would do? No, he would say Ivory Soap, as it stands for everything that he could say about it.

We see, then, that with such trade-marked goods, it is essentially a transaction between the two people—the man who makes the product and the man who uses it. These are the two indispensable factors in the transaction. All others are middlemen. And to whom does the good-will in the trade-mark belong? Ask this in any Court and they will say—to the owner of the trade-mark of course. But do the Court decisions sustain such a contention when this trade-mark can be appropriated by any big or little dealer, according to the whim of the moment, and can be used by cutting the price to ruin the market and destroy the value of the trade-mark. There is really nothing about such property in a trade-mark, if men won't recognize it and protect it under the system of law which they establish. How, then, can we expect men to spend their lives building up products, based upon a trade-mark, if the results of their labors can be wiped out by those who have no permanent interest in the goods, but who would as willingly sell one thing as another. And is it any public advantage to have a few pennies of price advantage once in a while, at the expense of driving well-known products off the market, causing the people to continually experiment with new things, and as soon as a particular thing is found to be desirable and gains a demand from the public, to be again subjected to *the price cutting process which eliminates it?*

Giving bargains on trade-marked goods, which others have built up, is like claiming a virtue for going into another man's field and stealing potatoes and then claiming to confer a public benefaction because one can afford to sell cheaply that which it has cost him nothing to create.

Let us meet the charge now that if makers are allowed to set the retail prices, that the prices will be set high. An intelligent examination of the situation disproves this, not only in theory, but in fact. The maker's object is to get a wide consumption for his goods—he wants a big sale—he wants the benefit of the lowered cost of production which results from extensive manufacturing operations. It must be understood that the manufacturer does not receive the retail price. He sells to the wholesaler or to a retailer. Nobody questions of course his right to say at what price he will part with his goods to the next man. The controversy comes over his right to say what the next man shall charge the consumer. In other words, it is a question as to whether the manufacturer of a trade-marked product which the public demands on account of his trade-mark, shall say how much profit the retail dealer shall make on that product. Naturally, he will not overpay the retailer, because that would mean an unnecessarily high price to the consumer and a restricted consumption. Furthermore, it would provide an opportunity for some one else to come in and set a lower price and get the business. Instead of that, his object will be to set the lowest price which will enable the merchant to sell the goods and have a living profit. This theory is borne out by an extensive investigation which was made about two years ago, involving over 300 products and comparing the profits made by the retail merchants on similar goods sold under standardized prices set by the manufacturer and under unsupervised prices established by the retailers themselves. The average profit which the dealer makes when he sets the prices himself is larger than that allowed by the manufacturer of the standard brands of goods which are in the public demand. Standardized prices established and maintained by the maker of trade-marked products does not restrain trade. Rather it restrains those cut-throat abuses which themselves restrain trade. It means trade expansion, not trade restraint. The manufacturer adopts it because it gets the widest possible consumption of his goods. If we do not give to the manufacturers of trade-marked products the authority to regulate the resale prices, we are in fact discriminating, because great manufacturers with ample financial resources can and do control their resale prices by sheer force. The Standard Oil Company is big enough and has sufficient wealth to maintain a sales force and a large enough stock to go direct to the consumer. It can sell from its own wagons and it gets from the consumer a price set by itself. A large manufacturer of soaps and toilet preparations is able to enforce prices, because he has an extensive variety of goods in large public demand and his capital is sufficient to enable him to have a sales force that goes to every retail store in the country. He can sell direct to the retailer and if the retailer cuts the price he can stop selling him. A smaller manufacturer has to sell through jobbers, because he can not maintain a large sales force, he can not carry a sufficient stock and he can not carry the credit risks which are taken by jobbers for those who sell through wholesalers. The small manufacturer has to employ the wholesale house, in which there is not involved any lack of economy, but there is involved a lack of any method by which the resale prices can be regulated.

The open price system, therefore, is working to the disadvantage of the small retailer dealer in his competition with the department store, mail order house and general store system and it is working to the disadvantage of the small manufacturer in his competition with the big one.

This un-American condition is inevitable when price competition is allowed to supplant all other considerations. It is mistaken policy, it does not befit a democracy. It throws to the winds those fundamental doctrines which are so dear to the heart of this people. It deprives the small man of an entry into the field. It fosters a condition where your children and mine must come into a field which offers one the chance to go into the office or factory of a great corporation, or the office or salesroom of a great store system. The chance to start out for one's self must not be given away in exchange for any system of questionable bargains. The whole trade wants price regulation and demands relief from intolerable conditions. The trade press reflects it. Every association of retail dealers has passed its resolutions in convention favoring resale price standardization. Referendum votes taken by a number of large manufacturers, has shown a 98% preponderance in favor of price maintenance among retailers. More than a million and a quarter retail merchants ask for protection from the assaults of their big rivals through the misuse of price cutting power. If this great Government, whose representatives are in session at the other end of Pennsylvania Avenue, will show some sign of interest in these little men, will show that its attention is not centered solely upon the great trusts and corporations, but that it can think even of the individual dealer, it will give heart to the dealers and encourage them to throw their energies into the merchandising business with a vim that will start the factory wheels, will bring stability and will mean an equality of treatment to all consumers on goods bearing a trade-mark identification. The one price system, the open and above-board policy of published prices, as against the dark, the secretive and the haggling processes, is the thing that business America asks for and will not be content until it comes, and it is the thing that the American people can and will give and will profit by the doing.

The Retailers' Point of View.

Speech of Mr. Donald Dey, of Dey Brothers and Co., Syracuse, N. Y.

LET me first say that I very greatly appreciate the invitation to be present on this occasion.

(After introductory remarks relative to the importance of the meeting, and the part which business plays in the United States, Mr. Dey went on to say:)

A master mind has said that "business has been liberated." If business is just born into this new freedom, it follows that it is still a child. If that is so, then it needs guidance, regulation, encouragement and support, and it needs to be sheltered from all kinds of attacks of infectious diseases.

My line of business is not a small one. It is large, touching life at many points, and has much of human interest in it; and it deserves consideration at this time. I have come not to plead for my fellow merchants, but to say a few words on this subject as a national one at this auspicious and initial opening.

I am deeply concerned in the interests of my fellow merchants, no matter whether they are located in my home town or in any of our American cities. It would appear to me that the subject now under consideration should appeal to us merchants because we have an indirect interest in the manufacturers of this country, and their products, especially those articles which find their way into our store-houses and salesrooms.

The consumer's point of view deserves our best thought, and we realize that our interests are closely allied with those of the consumer. The manufacturing interests in any community have an influence on its welfare, according to their size, and interpretation of their obligations to that community. We are therefore concerned in maintaining the legitimate interests of not only our own manufacturers but of those in other communities. There is a keen association of reciprocity existing between these various interests.

Whether we realize it or not, we are deeply concerned in all laws that seek to control and govern the acts of a manufacturer. We cannot separate ourselves from the effect of laws that are designed to curtail legitimate operation or proper and legitimate expansion.

The subject before us is unquestionably a national one, and yet

Mr. Dey on Retailers' View (*Continued*)

it is intensely local. When we view it as national, affecting the retailers of the entire country, the question rises to great heights, and becomes a very broad one. When we view it from a local point of view, it becomes an acute question of considerable vitality, affecting the welfare of the merchants and of his competitors, and many within his zone of influence. I attach a great deal of importance to what may properly be called a zone of influence. First, within this zone a cut price affects our immediate neighbor. If it is advertised, it affects the merchant who may have that same article for sale one hundred miles away. When we contemplate this phase of the question, it puts a somewhat serious aspect on what might be the whim of a merchant brought about, perhaps, by the influence of a poor cup of coffee in the morning. And yet the influence of his act radiates for miles around his business house, affecting his own profit and that of his neighbor.

I have come to this meeting with open mind on all the points that may be raised, having to do with this question of price maintenance. But I have definite and positive personal views on the commercial ethics involved in price cutting, and will come to a statement of these views later.

RIGHTS OF THE MANUFACTURER

None of us will question the right of the manufacturer to seek to promote to his own best advantage whatever article he has to offer to the public. We should not assume to ourselves a free hand at criticizing his method, whether that method be the usual one of putting his product before the jobbers of the country, or the retailers of the country, through the channel of skilled representatives or agents; or whether he should select the press, the magazine and the mail service to accomplish his end. Any one of these is legitimate, and any or all are expensive, and when the manufacturer seeks to attach to his product a retail price, and expects that price to be maintained, he must then give due weight and consideration to the difference between his selling price and the nominated retail price.

At the point where the manufacturer's agent comes in touch with the retailer with an advertised article, and where that article has intrinsic value and unquestionable merit, it is a simple matter to do business, provided the article offers a fair margin of profit to the merchant, and provided that the exclusive sale is to be given that merchant.

The maintenance of price in this case is easy, and seems justified and reasonable, and it is plain that the consumer's interests are not being damaged.

But when the article becomes an article of universal sale then many new elements enter into consideration. Here we have the manufacturer bring about a situation for his own interests that has a feature of damaging influence in it to the retailer. He has at once become a procuring cause in a situation that presents tempting opportunities for price cutting.

The manufacturer may be free from blame and responsibility, yet the fact remains that this widely advertised article has become an article of great capacity for the establishment of unfriendly competition; indeed it may not be going too far to assign to it the cause.

If the manufacturer has given an article of value, in pricing it he must take into account his overhead charges, his selling expenses, and in addition his advertising expense. Here is a point where the retailer may very properly question the manufacturer as to the wisdom of prodigal advertising. The margin of profit must carry this advertising, and therefore it must be admitted that the article itself carries this as a fixed charge, and the consumer pays the bill.

The retailer, to a degree, is an innocent party. The energy of the manufacturer has filled the public mind with a desire for the article, and the merchant must meet this demand. It has occurred to me that the merchant has a moral responsibility in adopting an extensively advertised article, and when he does so, he has, by this act, endorsed what the manufacturer has said, and also the quality of the article itself. In other words, he is binding himself down to a proposition that may in the near future become a thorn in his commercial side.

(At this point, Mr. Dey referred to various lines of merchandise "that have always been offered at a fair price and have never in any way whatsoever been controlled with respect to a selling price." He mentioned American silk, rugs, cotton cloths, hoisery, underwear and shoes. He then went on to say:)

Chain stores, no matter whether it be shoes, or something else that is nationally advertised, are unresponsive to community interest.

Local merchants have a most trying situation created for them by the aggressive advertising of a manufacturer engaged in national advertising. A few avenues of escape are available, neither of them leading to a safe harbor. He may stock the article, and be a loser. He may seek to effect a peace compact on price with his neighbor, and then bump up against a national law that is rigid.

As a merchant, it seems to me that the Sherman Law was not designed to prohibit so reasonable an item in practical business as an agreement to sell Coates' thread at five cents per spool.

I do not know of a city that has escaped fierce and remorseless competition in trade.

It is not within my province, nor is it my desire to raise so deep a question as competition as a concrete subject, but it seems impossible for me to escape it on this occasion and reach a certain point which I regard as crucial.

Have our legislatures given due consideration to the kind of competition that is destructive, or tends towards the destruction of legitimate interests?

Has the public been heard from on the kind of competition that may, indeed, must be classed as illogical and destructive, brought about by rivalry, strife and antagonism?

Surely this sort of thing is at variance with fundamental principles of economics and commercial ethics.

AGREEMENTS PERMISSIBLE

We have agreements of hours of labor. May not the merchants without injury to the consumer agree with each other on so reasonable a matter as a fair minimum of price? This leads me to say that in the wisdom of the legislature they will surely find a way to permit an arrangement of sale that will be fair, equitable and just.

As a layman it seems incomprehensible to me that a manufacturer and a merchant may not enter into an agreement to buy at a certain price, and to sign a stipulation and agreement as to re-sale.

It seems unreasonable to me that merchants must appeal to the government for the privilege of entering into a contract with a manufacturer to buy and sell merchandise according to a mutual arrangement or agreement.

I think in a practical way we need have no fear of there not being enough competition between the dry goods merchants of every town or city in this broad land of ours.

Coming down to where I may express my personal views on the matter, I feel that the whole subpect is so very new, that is, the education of it is so new, that we may well endeavor to make haste slowly, and that practical business judgment, sound and ethical thinking may solve our problems without having to evoke the aid of the lawmakers of this country to regulate matters that are so flexible by an inflexible law.

If it becomes necessary for me to answer the question whether advertised goods, so far as our line of merchandise is concerned, are equal or better than goods that are untrademarked, my experience would compel me to answer that the open market gives us the most goods for our money, therefore the commercial and the consumer's interests are better served from the open market than from advertised specialties.

Undoubtedly the unadvertised goods escape the additional cost of advertising, and therefore it is reasonable to suppose that the merchandise will cost just that much less.

When price cutting of advertised articles is indulged in by local merchants, and it has become a fixed habit, we must look for the reasons that enter into this practice, and we find, first, that it must be to attract public attention, which is a legitimate and permissible act; or it may proceed from a desire to draw from the competitor a portion of his patronage. It may also be assumed that it may proceed from a feeling of animosity or antipathy towards a competitor.

It seems to me that price cutting may proceed from a narrowness of vision and from a point of view that is not ethical, and not justified in fair business competition.

It seems perfectly clear to me as a merchant that there is a wide field open to every merchant in this country for honorable and legitimate competition. There is plenty of room for brilliant work in the manipulation of our business without resorting to price cutting on advertised goods, especially as price cutting is only of incidental value to the consumer.

Every mercantile establishment is subject to a certain overhead charge, which is impossible for it to escape, and every item that is disposed of below a certain level must have its counterpart in another item that is above that level, in order to retain an equilibrium and a fair margin of profit.

We are justified in assuming, then, that prices in any good store equalize each other, and that at the end of each inventory period this equalization will be made manifest. If price cutting prevails, there will be a loss. If a fair level of profits prevails there will be a gain.

(Mr. Dey at this point quoted from a number of replies received and published in the Drygoods Economist. These quotations showed a general tendency to decry the advantage to the merchant in handling nationally advertised goods.)

My practical acquaintance with our line of trade leads me to believe that price cutting on nationally advertised goods has become a subject of vital importance, and a matter of interest to retail men throughout the entire country; indeed, I look upon the practice as being a menace, and believe the retailers should, in some way or other, reach a saner method of doing business. I feel sure that when the subject has been brought seriously to the attention of the average merchant throughout the country, that the ethical side of the question will appeal strongly to him and that his views will be changed, and with the change of view will come a change of method.

We hear much of scientific methods in business. The word efficiency rings in our ears, and it is being driven home to us with renewed vigor from all sources. Our check girls and boys are familiar with it. Surely in this new era of education and the application of scientific methods to our business, we will see the advantage to be gained from a maintenance of price where the price of an article is reasonable, and where the value is assured and it is staple, and the interests of the consumer are safe-guarded. No sane man wants a fixed price on a Paris hat of latest mode.

The destruction of co-operation by reason of our competitive methods should not be harbored in the minds of a scientific or creditable merchant. That sentiment belongs to the "Dark Ages."

We must compete with our neighbor scientifically, and we must compete with him as to quality of service, quality of merchandise and the delivery of goods worth the money.

Let me appeal to my fellow merchants for fair dealing, honorable competition and for the application of sound business principles and sound ethics, having in mind in all their efforts public weal. May they realize that their chiefest obligation as merchants is to deliver goods worth the money. Eliminate greed and inordinate publicity, also undue speeding up and unnecessary wear and tear, all of which may come at the cost of real progress and sound business principles.

Statement Regarding Valuation of Railroads

The first official statement of the plans involved in ascertaining the value of railroads in the United States, was made at the Second Annual Meeting of the Chamber of Commerce of the United States, by Hon. C. A. Prouty. Mr. Prouty was formerly a member of the Interstate Commerce Commission and has recently been made Director of the Division of Valuation in that Commission because of his intense interest in the great subject involved. The entire speech has interest for every portion of the United States. It gives understanding of the task involved, the time required, the estimated expense and the motives that prompted the legislation.

I have been asked to address you upon the valuation which the Interstate Commerce Commission is about making of the property of common carriers subject to its jurisdiction. That work has not sufficiently progressed so that its details could be either intelligently or profitably discussed, but there are certain general phases of the matter which will interest, and should be understood by, the members of your organization. Considered in that broad aspect, the subject naturally divides itself into three heads:

First. The thing to be done.

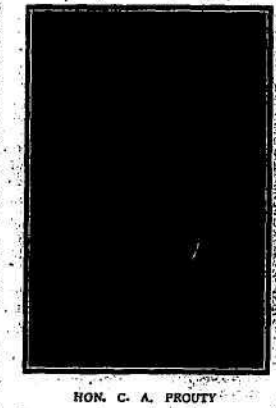
Second. The time and expense required.

Third. The benefit to be derived.

THE THING TO BE DONE

The Commission proceeds under a special act of Congress of March 1, 1913. That act, which was evidently drawn after much consideration and with great care, defines in detail the duty of the Commission and should be carefully read by everyone interested in the work. This act embraces the property of all common carriers subject to the jurisdiction of the Commission, but I shall speak tonight of railways alone.

By the terms of the act the Commission is required to ascertain and report the cost of reproducing new the railroad and other property of every railway company in the United States, and the cost of reproduction less depreciation. Evidently, before it can be determined what it would cost to build a particular railroad as it today exists, we must know exactly where and what that railroad is. This means that as a preliminary to the work of valuation every railroad must furnish the Commission with maps and plans which will identify its property. Investigation shows that some few railroads in the United States have today such maps and plans; many railroads have maps and plans which contain a part of the information required but not the whole; while many others possess nothing of this sort worth naming. So far as these plans already exist, even though not in the most desirable form, they will be used; in so far as present maps can be added to and extended this may be done, but where no maps exist new ones must be prepared. When this work is completed, there will be found in the office of the Commission at Washington an accurate map and inventory of the property of every railroad engaged in interstate business as of June 30, 1914, together with other maps and plans showing all subsequent additions to the property. This of itself is a work of great magnitude which must be done by the carriers as a part of the general undertaking. You as business men will agree that while some expense will be entailed upon our railroads it will be to them well worth the cost.



HON. C. A. PROUTY

When the Commission has been furnished with this complete inventory by a railroad it must proceed to verify it; that is, it must ascertain whether the facts stated in the inventory are true. It must determine the number of yards of earthwork, the number of yards of rock, the culverts, the tunnels, the bridges, together with the character and cost of construction. It has been decided that this information cannot properly be obtained without sending a surveying party over every mile of the railroad. Sometimes the progress of this party can be comparatively rapid; at other times it will be slow; at all times the work must proceed with sufficient care and detail to make certain that the figures obtained are correct. If this valuation is to serve its purpose it must be so made that it will not be open to just criticism. The general public must feel that the work has been properly and thoroughly done, and that the result is reliable. This would not be if any fact which could be accurately ascertained were guessed at.

It will be necessary to note in the course of these surveys and to determine in various other ways the amount of depreciation so that when the work is completed the records of the Commission will show the extent and character of the property of each of our railroads, the cost of rebuilding that railroad as it exists, and the amount of depreciation in the several articles which go into the railroad as well as in the railroad as a whole.

This is mainly an engineering task. The time and expense will be considerable; indeed, herein arises the major part of the outlay, but no serious difficulties are involved, nor should the result when ascertained be in serious doubt. It should be possible for the people of this country to know upon the completion of this work what it would cost to rebuild its railroads new and to what extent those properties have depreciated as compared to new.

This work is often referred to as a "physical valuation" of railways, and most people probably understand that this cost of reproduction, with or without depreciation, determines the value of the railway so that, having ascertained and reported these facts, the duty of the Commission has been discharged. But this is by no means true. Up to the present time the holding of the Supreme Court of the United States is that cost of reproduction new, or cost of reproduction less depreciation, are only factors entering into the final question of value. Many other things have been enumerated by that court as bearing upon the value of the property. The valuation act itself requires the Commission to ascertain and report the cost of construction, the amount of money which has been invested in the property, and the sources from which that money has been derived; to give, in short, a complete corporate and financial history of these properties; to take note of the earnings of the property, and having all these facts before it to determine from a just consideration what is the value of the property itself. I am not saying that it may not finally come to pass that the cost of reproduction will be the controlling factor; many people so insist. Others urge with equal earnestness that the true test of value, so far as it can be ascertained, is the money invested in the property. I express no opinion upon any of these propositions. I simply call your attention to the fact that the Commission is required not merely to ascertain the cost of reproduction, but to state the value of the property, and that in attempting to do so many delicate and difficult questions may be encountered. Let me instance one or two of these as illustrative.

The first railroad which the Commission is proceeding to survey in what is known as the Pacific District is the San Pedro, Los Angeles & Salt Lake, extending from San Pedro, California, to Salt Lake City, Utah, some eight hundred miles. Most of this road has been built in comparatively recent times, and the circumstances and cost of construction are fairly well known.

The course of the road is for the most part through an arid desert. A certain section of it, when built, was located where no man thought it could ever be disturbed by floods, yet shortly after it was opened for operation the floods came and carried out this portion. It was at once reconstructed upon a new location supposed to be beyond all possible danger from a recurrence of the previous disaster, nevertheless the waters again came and washed away this same section; whereupon it was rebuilt upon a third location, beyond all possible reach of future trouble from this source.

Considering the nature of the road and the people who were interested in its construction, it seems probable that due caution was exercised in the original location; that is, that a reasonably prudent man building this railroad as those men did, to be operated by them as a railroad, would have located it as it was located. It is undoubtedly true that the second location was made with great care, and was believed to be beyond possible danger. It has cost a large sum more to rebuild this road than it would have originially cost to construct it where it is today. Now in determining the value of this property what if any allowance is to be made for this experimental outlay? If the government itself had constructed this railroad it probably would have had the same experience and would have expended the same amount of money which the owners actually did.

This illustration puts the question in a very striking form, but the same idea enters more or less into the valuation of most of the railroads of this country. There has of necessity been a certain amount of experiment before hitting on the right and proper thing. Does this development expense constitute an element of value which may be recognized today, or must the owners of these public utilities stand the loss of their mistakes in the same way that the owner of a private enterprise would? Vast sums of money are involved in the answer to that very simple question.

Take another illustration of a different character. Some years ago in a case pending before the Commission the Northern Pacific Railway Company had occasion to prove the value of its property, and it did so by showing the cost of reproduction. For this purpose it gave the units which entered into that railroad as it then stood. Among other things it showed the amount of land upon which its right of way was located and what it would cost to acquire that land for railroad purposes at that time, claiming that this cost of reproduction was the value of its property.

The Northern Pacific runs through the city of Spokane. When the road was built that city was of small account but it has come to be to much account, and in the process of development it has grown up on both sides of this railroad. The Northern Pacific claimed, and it may very well have been true, that the cost of acquiring its right of way through the heart of the city of Spokane at the time of the hearing would be at least five million dollars. The original cost to the railroad was nothing, the right of way having been entirely donated either by the government or by private benefaction. Now to whom belongs this five million dollars? Has the Northern Pacific the right to tax the public for a return upon that amount? Whether it has is a thing of great consequence, for nearly one-fourth of the entire value of the Northern Pacific Railway, as shown in that proceeding, was the value of its right of way, much of which was due, as in the city of Spokane, to increase in value over its original cost. This question of the unearned increment presents in the valuation of our railways a difficult problem.

Mr. Prouty on Railroad Valuation (*Continued*)

Illustrations like those two might be indefinitely multiplied, but these are sufficient to exhibit the thought I wish to emphasize: namely, that this valuation of our railways is not a mere engineering problem, involving the cost of reproduction or the amount of depreciation alone. Indeed, it is not properly an engineering problem at all but rather a social and economic problem; a legal problem; in its final analysis a political problem. It is for the Commission first of all to ascertain all these facts and from them to deduce what in its opinion is the fair value of these properties. That conclusion may undoubtedly, in some respects and to some extent, be modified by the courts. *In the final analysis it will be for the people to say what measure shall* be meted out to these railways. While courts and commissions may influence and even temporarily determine questions of this kind, the *will of the masses finally prevails, and it is therefore of first importance* that the body of the people should have accurate information.

Looking to the work of the Commission alone, and answering the first division of my subject, the thing to be done is this: To marshal every fact obtainable with respect to the present condition and the past history of our railways, and from a just consideration of all these facts to determine the fair value of the properties today.

THE TIME AND EXPENSE

The Valuation Act became a law on March 1, 1913, and the Commission was required by its terms to begin the work within sixty days and to prosecute it with all due diligence. The Commission entered upon this task within the limit specified but up to the present time no substantial progress has been made in the body of the work. While the Commission was permitted by Executive order to employ ten engineers who will have general superintendence of the engineering work, our employees, both engineers and accountants, must be obtained through the Civil Service Commission. Since the government had never done any work of this character, that Commission had no rolls from which competent persons could be employed, and although the preparing of such registers was at once begun and has been prosecuted with all possible diligence, it is only within the last few weeks that they have been actually available.

For the purpose of making the surveys to which allusion has been made the country has been divided into five districts, by States, each containing approximately fifty thousand miles of railroad. Each of these districts will have an organization of its own which will conduct the surveys within those particular limits. Subsequently these surveys will be worked out, partly in the district and partly at the head office in Washington. Surveys began in all the districts except one about February 1, and will begin in that district about February 15.

It has seemed to the Commission the part of wisdom to proceed with caution until sure of its ground In this view a railroad has been selected in each district upon which these surveys will proceed with deliberation and in such manner as to afford a kind of instruction school to all employees. This preliminary work will occupy three or four months, which means that we shall not be in position to rapidly develop our organization until about July 1 Beginning then, or slightly before, our force can be rapidly increased.

While it is somewhat hazardous to make an estimate of the time required without more experience than we have had, it is my opinion that the field surveys ought to be concluded in from four to six years from July 1st next. It is hoped that the accounting and other work will keep pace with our field surveys. The putting together of these facts, that is, the actual valuation will necessarily lag somewhat behind the obtaining of the facts themselves. The Commission will in the near future have all the data with respect to some railroads, but whether a valuation will be at once announced in such cases must depend upon the method which the Commission selects for determining the various questions which will arise and to which reference has been made.

Any estimate of the expense must be even more unreliable than that of the time. Railroads have been valued both by public authority and by themselves, and the cost of these valuations has run all the way from two dollars to eighty dollars per mile. I have already said to you that this work, in order to meet its purpose, must be thoroughly done, and this will require a larger outlay upon the part of the Federal Government than has usually been made by the States. Moreover the work required by this act is much more comprehensive than has ever been undertaken by any State. Knowing what must be done, the methods which must be followed, the rate of accomplishment which has been attainable in other places, I should say, basing my estimate upon the experience of State commissions, that fifteen dollars per mile would be sufficient to cover the engineering part of the work and ten dollars per mile the accounting and other features. This would aggergate for the entire 250,000 miles between six and seven million dollars.

If the experience of railroads be consulted an entirely different conclusion is reached. The cost, as reported to us, of valuations conducted by the carriers themselves runs from forty to eighty dollars per mile. It is true that in this work by the railways certain things are included which will not be done by the Commission, but to offset this most carriers have ascertained simply the cost of reproduction, with no reference to depreciation, and with but little accounting work. If our information is correct and if the government cannot do this work cheaper than the railroads themselves, it will cost at least fifty dollars a mile to complete the work. I told the Appropriations Committee of the House last July that from what I knew about the subject then I should not advise Congress to enter upon this undertaking unless it was ready to expend at least twelve millions, and another six months' reflection has not changed that opinion

While, however, this is a large sum, and much more than Congress contemplated when the act itself was passed, it is the merest trifle compared to the enormous values involved. The capitalization of our railroads at the present time aggregates nearly twenty-billions of dollars. It has been recently estimated that these securities at their present market value are worth from fourteen to fifteen billions. The cost of this work, therefore, cannot exceed from one-tenth to one-twentieth of one per cent of the value ascertained, a sum utterly insignificant in proportion to the magnitude of the thing dealt with.

Look at this from another standpoint. One purpose—to some minds the principal purpose—of this valuation is to determine the amount upon which the public should be required to pay a return to the owners of these public utilities. Assume that this valuation varies the amount upon which such return should be paid by only five per cent. Five per cent of twenty billions is one billion, and a return of six per cent upon one billion is sixty millions annually. The difference to either the public or the railroad may therefore well be, for every year, five times the entire cost of the valuation itself. Certainly there is nothing in the expense which should deter the people from demanding the prosecution and completion of this undertaking in a thorough and competent fashion.

THE BENEFIT

What, finally, is the purpose of and the benefit to be derived from all this outlay of money and of energy? There are many advantages, some of which I shall refer to without thereby intending to minimize the others. And first let me call your attention to the incidental benefit to the investing public.

Many persons seem to hold the opinion that the government in dealing with monopolies like the railroad owes nothing to the investing public. *Caveat emptor*—let the buyer take care of himself—such has never been my own thought. The investor is a necessary part of the well-balanced state, and is often in need of protection from public authority. It is the duty of the government within reasonable limits to see to it that the would-be investor is not hoodwinked in the making of *his investment and that the value of his investment, when once made,* is not improperly destroyed.

In railway investment the public has a more immediate interest. Just in proportion as railway securities commend themselves to the investing public it is possible for the railway to obtain the money with which to make necessary improvements to its property. Whatever benefits the credit of our railways; whatever gives to railway securities the investment quality with bank stocks and municipal bonds; whatever, in a word, takes from railroad stocks the speculative and uncertain element, indirectly reduces the cost of furnishing railway service and thereby inures to the benefit of the general public.

Now when any investor can know from reliable sources the exact character of his investment; how much it would cost to reproduce the *property; in what state of efficiency that property is being maintained;* above all, what is the value of that property for use as a railroad, there has been injected into railroad securities an element of certainty and of permanency which does not now exist. It seems to me therefore that this work of valuation will be of incidental benefit to the railway investor and so to the general public. While this has not been generally, perhaps not at all remarked upon as an advantage, it will turn out to be a substantial one.

To the general apprehension the object of this valuation is to determine what rates our railways should be allowed to charge for their services to the public.

While the property invested in our railroads and other public utilities is private property, the government has, in consideration of the *nature of the service rendered, the right to impose upon this property* the terms and conditions under which it shall be used It may, in the case of a railroad, determine the character of its equipment, the schedules upon which its trains shall run, and in general may control the operation of the property in so far as the public has an interest therein. It may fix the rates to be charged by that railroad for the transportation of persons and of property and for any other service which it renders to the public. To this power of the government over such private property there is this important qualification: Under the Constitution of the United States as interpreted by the Supreme Court of the United States such property must be allowed a fair return upon the fair value of the investment.

What is a fair rate of return depends, probably, to some extent upon the character of the property and its location. The relative functions of the legislative and judicial branches in the fixing of that rate are not yet clearly defined. All just men concede that it should be substantially the same as the return obtainable from private investment having the same incidents. Manifestly it is not a difficult thing to determine the rate of return to which this property is entitled. There still remains, however, the value upon which this rate is to be computed, and until that value is known it is impossible to determine what total income the property is entitled to earn and, therefore, to fix the charge which may be justly made against the public.

The rates of public utilities are at the present day usually fixed by commissions, both state and federal. It is perhaps the natural inference that when the value of the property has been determined and the rate of return fixed the work of the commission in establishing the charge of the public utility is comparatively easy. It is only necessary to multiply the value by the rate and to allow a charge which will yield that income.

And this, with some important qualifications, is true as to certain kinds of public utilities. Take, for instance, a water plant or a gas *plant. This serves a single community As a rule it meets* no competition in that service. The amount of its business is known or can be forecast with reasonable accuracy Even matters of depreciation and such like have come to be pretty accurately understood. It is possible, therefore, to fix with some confidence the rates of such a utility when the value of the investment is known.

With the railroad, however, this is entirely different for the reason that it seldom happens that a single railroad can be considered by itself. The greater part of the business of the railways of the United States is subject to competitive conditions of one sort and another

Mr. Prouty on Valuation (*Continued*)

which are largely controlling so that the rates of one are necessarily bound up with those of another. A moment's thought will show the extent to which this is true.

Nearly every station at which considerable quantities of traffic originate or are delivered is served by more than one railroad. It is possible, for example, under present switching absorption tariffs in force at the city of Chicago to reach any point within the switching limits of that city at the same rate by any line which reaches the city. The same is in substance true of the city of New York and the great industrial district of which New York is the center. It is also true that while two given points may each be served by but two railways a great variety of routes between those points can be found by choosing different intermediate carriers. For example, lumber from almost any point of production in the south can reach Chicago by a variety of routes through the various Ohio River gateways. Now while it may occasionally happen that the rate by one route is different from that of another, broadly speaking the rate by competing rail lines is the same. Whatever charge is made by one line between New York and Chicago must be made by all; whatever charge is imposed for hauling lumber to Chicago by one route must be the same by all competing routes.

Nor is direct competition of this kind the only competitive force of controlling influence. An examination of conditions in almost any agricultural State like Iowa, for example, will show that the farm upon which the corn or the wheat is grown lies midway between two lines of railroad so that the product of the same can be sent to market by two, and often by three, different carriers. Manifestly the rate made by each of these carriers for the transportation of this farm produce must be substantially the same. If the farm of Mr A is five miles from the Northwestern and the same distance from the Rock Island, the rate of transportation under which his wheat and corn and live stock can reach Chicago must be the same by both lines, and the financial necessities of either line are not of the slightest significance. This kind of competition, which is sometimes denominated by railroad men "cross-country competition," powerfully influences and often absolutely controls the rates upon certain commodities which furnish large amounts of traffic.

Still further it often happens that where the service is purely local and can only be rendered by one railroad still the rate which must be applied is dictated by competitive conditions. A coal mine may be served by a single carrier, but that carrier cannot therefore impose whatever rate it sees fit upon the product of that mine, for, unless the charge to the point of consummation is as favorable as that from some competing mine by some other carrier, the mine itself cannot do business and the railway loses the traffic. This sort of competition is of universal application and of tremendous influence.

Without further pursuing this subject, which of itself is a broad one, it will be seen that the railroads of this country are so bound up together that their rates are largely interdependent. It is impossible to shake a single railroad free from every other and fix its charges upon the basis of a fair return upon its fair value as you would in case of a gas or water plant. The rate established for one, of necessity, influences and frequently absolutely determines the rate of all, a fact which must never be forgotten in discussing this subject.

Now it is evident that if the Commission should select that road most advantageously situated, that road whose business is the largest and upon which the conditions of operation are the most favorable, and should so adjust its rates as to yield a return of six per cent upon its value, every other railroad standing in competition with it would receive less than a six per cent return and some railroads might receive nothing whatever. The schedules under which one carrier would earn a fair return upon its investment might not even pay the operating expenses of its competitor. Upon the other hand, if that road laboring under the greatest disadvantage were to be selected and such rates established as would permit it to make a return of six per cent upon its investment, its competitors would one and all be receiving an undue return upon their investment.

A certain amount of traffic is strictly non-competitive. What proportion this may bear to the whole I have no idea; the per cent would be small. Theoretically it might be possible for railroads to take up the slack, so to speak, between what would be a fair rate for one and that for another by an adjustment of rates upon this local business. In the Minnesota Rate Case and cognate cases, recently decided by the Supreme Court, it was held that while the principal railroad systems involved had not established confiscation and must therefore submit to the rates prescribed, certain roads of minor importance had made out their case. These lines, in so far as they could, were allowed to charge higher local rates than the others.

The effect of this would be to establish extremely high local charges upon certain lines and extremely low local charges upon others. Upon main lines and upon lines of dense traffic, rates would be low; upon branch lines and those with less traffic, charges would be high. The general effect would be to concentrate business into certain localities, whereas it has always seemed to me that the aim should be to so adjust transportation charges as to secure a general diffusion of values and of business. If this government operated its railways rates would be generally the same upon all lines in given sections.

While, however, I wish to make it perfectly plain that the problem of establishing railway rates will not be solved by this valuation, I desire to say with even greater emphasis that that problem will be enormously simplified. It can be known with certainty whether the general level of rates is or is not too high, and in establishing the charges to be observed by a single carrier, even in fixing the rate upon a single commodity, it will be of much benefit to know the value of the property involved. Every railroad commissioner will join with me in saying that here is the only solid foundation upon which he can stand; that the determination of these values is indispensible to the just and intelligent administration of his work.

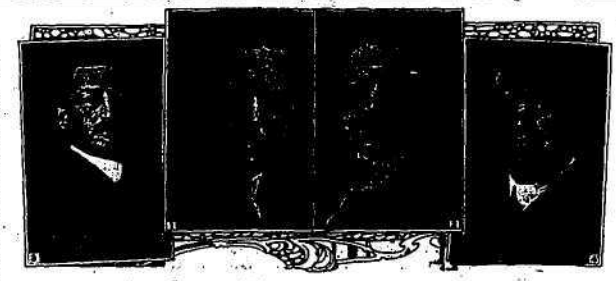
While this valuation will be of incidental benefit to the investor, while it is essential to the work of the rate-making tribunal, it seems to me that its greatest immediate value is political. The state of the public mind towards our railways is such that this information is absolutely necessary.

Some years ago the Commission had occasion to examine the reasonableness of rates to points upon the Pecos Valley Line of the Santa Fe System. The railroad under consideration runs from Amarillo, Texas, into and through what was then the Territory of New Mexico. That part of the line in Texas had been constructed under a Texas charter, and therefore in conformity with the Texas stock-and-bond law under which the capitalization could not exceed the investment in the property. The railroad in New Mexico had been built under a charter from that territory, without any limitation upon the mount of securities which could be issued. The cost of the road was substantially the same in Texas and New Mexico — perhaps slightly greater in New Mexico. The capitalization of the Texas company was $8,000 per mile, that of the New Mexico company $42,000 per mile.

This is a somewhat striking instance of what has happened at certain times in certain parts of this country in the building and capitalizing of our railroads. From what is known of such operations there has come to be a deep-seated conviction in the minds of many people that our railroads as a whole are enormously over-capitalized and that the public is paying interest and dividends upon securities which represent no actual value.

Upon the other hand, it appeared in the Eastern Rate Advance Case, decided in 1910, that the Pennsylvania Railroad had in the ten years preceding that investigation put into its properties east of Pittsburgh more than two hundred million dollars from earnings, which, therefore, was not represented in the capital account of that company. It is well known that many other railroads have improved their property out of earnings without any corresponding increase in their capital accounts. This leads many to the conviction that while individual railroads may be over-capitalized our railroads as a whole are worth more than their stocks and bonds.

Consider the developments of the investigation into the affairs of the St. Louis & San Francisco System, conducted by the Interstate Commerce Commission. Consider conditions in New England today, where the fate both of the Boston & Maine and the New Haven systems is trembling in the balance. None of these questions can be answered; none of these situations can be justly dealt with until we know the actual value of these properties. This is the question which arises before the student of this railway problem at every angle. This is the question which must be answered before this problem can be intelligently discussed. For this reason, above all, it is important that this work should be pressed to a completion in the most expeditious and the most trustworthy manner possible.



SPEAKERS ON METHODS OF COMMERCIAL ORGANIZATIONS

1. Douglas A. Fiske, President Minneapolis Civic and Commerce Association;
2. S. Cristy Mead, President American Association of Commercial Executives, and Secretary Merchants Association, New York City;
3. E. W. McCullough, Secretary National Implement and Vehicle Association;
4. Paul T. Cherington, Graduate School of Business Administration, Harvard.

FOUR speeches relative to the methods of commercial organizations were a stimulating feature of the first day's session of the Second Annual Meeting. The first speech was by Mr. Douglas A. Fiske, President of the Minneapolis Civic and Commerce Association, and was entitled "A New Civic Consciousness—the Hope of the Nation." Mr. Fiske made clear that through the patriotic services rendered to communities by the members of commercial organizations there is coming to the business man of America a clearer comprehension of the close relation existing between his success and the prosperity of his community as affected by united effort.

The second address was by Mr. S. Cristy Mead, President of the American Association of Commercial Executives, and was entitled "Methods of Commercial Organizations." The speech was a clear analysis of the forces that have created commercial organizations and also of the possibilities of standardizing their methods.

The third speech was by Mr. E. W. McCullough, Secretary of the National Implement and Vehicle Association, and dealt with National Trade Organizations, their Service and Needs. He defined the real power of these organizations today as being measured by their ability to collect data and educate their members in order that they may view as with one mind, their common problems, thus rendering solution of them less difficult.

The fourth speech was delivered by Mr. Paul T. Cherington of the Graduate School of Business Administration of Harvard University. His general topic was "Training Commercial Secretaries."

The four speeches were very valuable and will be referred to more adequately in a later issue of THE NATION'S BUSINESS.